

**CONSULTANT SERVICES AGREEMENT****Related to Design Services for Brannan Street Crosswalk Improvement  
Plans and Specifications**

THIS AGREEMENT is entered into as of the 20th day of June, 2018, by and between the CITY OF CALISTOGA, herein called the "City," and BKF Engineers, herein called the "Consultant."

Recitals

WHEREAS, City desires to obtain professional services in connection with the preparation of plans and specifications for safety improvements to the crosswalks at the intersection of Brannan Street and Lincoln Avenue; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Consultant. The Consultant shall assign Greg Hurd, P.E. to have overall responsibility for the progress and execution of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Consultant are to commence no sooner than June 6, 2018 and be completed not later than September 1, 2018. Consultant shall perform its services in accordance with the schedule attached hereto as Exhibit A, and incorporated herein by reference. Any changes to these dates in either this Section 3 or Exhibit A must be approved in writing by the Project Manager.

C. Standard of Quality. City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit A, and incorporated herein by reference. However, in no event shall the amount City pays Consultant exceed Thirty-Four Thousand Seven Hundred Dollars (\$34,700), unless amended. Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment.

Consultant shall submit itemized monthly statements for work performed. City shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. No Overtime or Premium Pay. Consultant shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Consultant shall not receive a premium or enhanced pay for work performed on a recognized holiday. Consultant shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's work product. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate

Consultant for the preparation and the testimony at Consultant's standard hourly rates, if requested by City and not part of the litigation brought by City against Consultant.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Consultant to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish City with every reasonable opportunity for City to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Consultant under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Consultant agrees to at all times avoid conflicts of interest, or the

appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. Consultant hereby agrees to defend, indemnify and hold harmless the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations for bodily injury, death and property damage only to the extent that such claims are caused by the negligence, recklessness or willful misconduct of the Consultant, its officers, employees, agents and subcontractors on account of or arising from Consultant's performance of services. For liability arising out of the performance of professional services, the Consultant shall indemnify, hold harmless, and defend the City, its officers, agents, employees, volunteers, and servants from and against any and all claims, demands, damages, costs, liabilities, or obligations to the extent such claims are caused by the negligent, reckless, or intentional acts or omissions of the Consultant, its officers, employees, agents and subcontractors in the performance of professional services under this Agreement. Notwithstanding any contrary provision herein, it is hereby agreed that the Consultant's obligation to defend or to pay the defense costs of the City arising out of the performance of professional services shall only apply if and when, and to the extent that the parties agree on, or a court or other forum of competent jurisdiction has determined, the percentage of Consultant's fault for the liability alleged, in which case Consultant shall be obligated to pay the amount equal to the percentage of its fault that has been actually determined.

13. Consultant Not an Agent of City. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.



15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City business license. The City is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Consultant and Consultant's subconsultants (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Consultant and Consultant's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Consultant's workers' compensation insurance policy which arise from the work performed by Consultant for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

17. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

18. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish the City with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by consultant.

C. In the event this Agreement is terminated by City without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

D. Upon termination of this Agreement with or without cause, Consultant shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Consultant, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consultant. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to City: City Clerk  
City of Calistoga  
1232 Washington Street.  
Calistoga, CA 94515

If to Consultant: Greg Hurd, Principal/Vice President  
BKF Engineers  
200 Fourth Street, Suite 300  
Santa Rosa, CA 95401

26. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. **Equal Employment Opportunity.** Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national

origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Consultant.

30. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

A. Exhibit A: Scope of Work, Schedule of Performance, Compensation

33. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

34. News Releases/Interviews. All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

35. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

36. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By:   
Dylan Peik, City Manager

Date: 6/20/16

CONSULTANT

By:   
Greg Hurd, Principal/Vice President

Date: 7-2-18

ATTEST:  
Kathy Flamson

By:   
City Clerk

**INTERGOVERNMENTAL AGREEMENT FOR SERVICES BY AND BETWEEN THE  
HOUSING AUTHORITY OF THE CITY OF NAPA AND THE CITY OF CALISTOGA**

**HOUSING AUTHORITY OF THE CITY OF NAPA AGREEMENT NO. C2018-200  
CITY OF CALISTOGA AGREEMENT NO. 780**

**THIS AGREEMENT FOR SERVICES** (this "Agreement") is made and entered into as of July 1, 2018 ("Effective Date"), by and between the HOUSING AUTHORITY OF THE CITY OF NAPA, a public body, corporate and politic (the "Authority"), and the CITY OF CALISTOGA, a municipal corporation (the "CITY") under the joint exercise of powers provisions of the Government Code of the State of California, California Government Code Section 6500-6536. CITY and Authority are public entities organized and operating under the laws of the State of California and each is a public entity as defined in California Government Code Section 6500. The Authority and CITY are hereinafter collectively referred to as the "Parties."

**RECITALS**

**WHEREAS**, the CITY desires to obtain housing services from the Authority during the Fiscal Year 2018 – 2019 and Fiscal Year 2019 – 2020, and the Authority is willing to provide such services to the CITY subject to the terms and conditions set forth herein.

**TERMS**

**NOW, THEREFORE**, CITY and Authority agree as follows:

1. **Term of the Agreement.** The term of this Agreement shall commence on the Effective Date and shall expire on June 30, 2020 (the "Term") unless earlier terminated in accordance with Paragraphs 7 or 8 of this Agreement.
2. **Scope of Services.** Authority shall provide the CITY those services set forth in Exhibit "A", attached hereto and incorporated by reference herein (the "Services").
3. **Compensation.**
  - (a) **Baseline Rates.** In consideration of Authority's performance of the Services, the CITY shall pay to Authority the baseline rate ("Baseline Rate") of Thirty Thousand Five Hundred Sixty Dollars (\$30,560.00) for fiscal year 2018–2019 and Thirty One Thousand Four Hundred Seventy Seven Dollars (\$31,477.00) for fiscal year 2019–2020.
  - (b) **Maximum Annual Compensation.** Compensation for the Services provided by Authority to the CITY under this Agreement shall not exceed \$30,560.00 for fiscal year 2018-2019 or \$31,477.00 for fiscal year 2019-2020 as detailed in the following table:



COMPENSATION BREAKDOWN			
Service Provided	FY2018-19 Cost	FY2019-20 Cost	Total Cost
HACN Baseline Housing Services	\$ 30,560	\$ 31,477	\$ 62,037

(c) **Rate for Additional Services.** If the CITY authorizes Authority to perform services that are not included in the Scope of Services set forth in Exhibit "A," Authority will be compensated for such services on a time and materials basis. The rate for Authority's time shall be the then-current fully burdened overhead rate (the "Fully Burdened Overhead Rate") for the employee performing the services. The Fully Burdened Overhead Rate is an hourly billable rate that captures all Authority costs (direct and indirect) associated with an employee, over and above gross compensation or payroll costs. Typical costs associated with the Fully Burdened Overhead Rate include payroll taxes, worker's compensation, health insurance, paid time off, pension contributions, other benefits, and indirect costs including departmental and CITY wide administrative overhead allocations. The applicable Fully Burdened Overhead Rate will depend on the Authority employee performing the services as each employee has a different Fully Burdened Overhead Rate that is calculated based on that particular employee's salary and benefits.

Any grant program administration or activity delivery services provided by Authority to CITY for HOME and CDBG loans after the expiration or termination of the Services Agreement between Authority and CITY dated October 21, 2014 and March 30, 2017 shall be considered additional services subject to the Fully Burdened Overhead Rate; provided however, the Fully Burdened Overhead Rate for such services shall exclude any indirect Authority costs, such as overhead allocations.

4. **Method of Payment.** The Authority shall provide to CITY an invoice for payment for the Services on the following dates and in the following amounts:

- (a) On July 1, 2018, an invoice equal to 50% of the Baseline Rate for fiscal year 2018-2019 in the amount of \$15,280.00; and
- (b) On January 1, 2019, a second invoice for the remaining 50% of the Baseline Rate for fiscal year 2018-2019 in the amount of \$15,280.00.
- (c) On July 1, 2019, a third invoice for 50% of the Baseline Rate for fiscal year 2019-2020 in the amount of \$15,738.50; and
- (d) On January 1, 2020, a fourth invoice for the remaining 50% of the Baseline Rate for fiscal year 2019-2020 in the amount of \$15,738.50.

CITY shall pay the Authority within thirty (30) days following receipt of an invoice.

5. **Independent Contractor.** The Authority shall perform the Services under this Agreement as an independent contractor. The Authority and the officers, agents and

employees of Authority are not, and shall not be deemed, CITY employees for any purpose, including workers' compensation. The Authority shall determine the method and manner by which the Services shall be performed. The Authority and its officers, employees and agents shall not be entitled to any of the benefits accorded to a CITY employee. CITY shall not deduct or withhold any amounts whatsoever from the compensation paid to the Authority, including, but not limited to amounts required to be withheld for state and federal taxes. The Authority shall be solely responsible for all such payments.

6. **Indemnification.** To the fullest extent permitted by law, CITY shall defend, indemnify and hold harmless the Authority and its elected and appointed officials, officers, agents and employees from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with CITY's acts or omissions under this Agreement.

To the fullest extent permitted by law, Authority shall defend, indemnify and hold harmless CITY and its elected and appointed officials, officers, agents and employees from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with Authority's acts or omissions under this Agreement.

7. **Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving fifteen (15) days written notice to the defaulting party in the manner set forth in Paragraph 11 (Notices).

8. **Termination for the Convenience of a Party.** This Agreement may be terminated by either party for any reason and at any time by giving no less than thirty (30) days prior written notice of such termination to the other party and specifying the effective date thereof.

9. **Payment for Work upon Expiration or Termination.** In the event of termination for cause under Paragraph 7 or termination for the convenience of a party under Paragraph 8, Authority shall be entitled to receive compensation for any satisfactory Services provided by the Authority prior to the effective date of the notice subject to the maximum amount set forth in Paragraph 3(b). In the event the termination results in the Authority receiving payment in an amount that exceeds the amount due to Authority for the Services provided under this Agreement, CITY shall be entitled to receive reimbursement for any overpayment from Authority.

10. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

11. **Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by first class mail, postage prepaid. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

**AUTHORITY**

Lark Ferrell, Housing Manager  
Housing Authority of the City of Napa  
P.O. Box 660  
Napa, CA 94559

**CITY OF CALISTOGA**

Dylan Feik, City Manager  
City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515

12. **Confidentiality.** Confidential information is defined as all information disclosed to the Authority which relates to CITY past, present, and future activities, as well as activities under this Agreement. Except as otherwise provided in Paragraph 15, as directed by the CITY Manager or designee thereof, or when required by the California Public Records Act, a subpoena or by court order, the Authority shall hold all such information as the Authority may receive, if any, in trust and confidence.

13. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in a writing signed by the Parties.

14. **Compliance with Laws.** In the performance of this Agreement, the Authority shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes.

15. **Access to Records/Retention.** CITY shall have access to any books, documents, papers and records of the Authority prepared or obtained by the Authority when providing the Services under this Agreement. Upon expiration or termination of this Agreement the Authority shall return all such records to CITY unless otherwise directed by CITY to retain or dispose of such records, except that with the written permission of CITY, the Authority may keep a copy of such records as long as such copy is maintained in confidence and is returned to CITY or its successor agency to be destroyed upon notification to Authority that CITY has authorized destruction of the original records.

16. **Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

17. **Interpretation.** The headings used herein are for reference. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California.

18. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

19. **Entirety of Contract.** This Agreement, together with "Exhibits A and B" attached hereto and incorporated herein, constitutes the entire agreement between the Parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof.

20. **Counterparts.** This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

21. **Privileges and Immunities.** In accordance with California Government Code section 6513, all of the privileges and immunities from liability, all exemptions from laws, ordinances and rules, and all pension, relief, disability, workmen's compensation, and other benefits which apply to the activity of the trustees, officers, employees or agents of the Parties when performing their functions within the territorial limits of their respective public agencies, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties associated with performance of this Agreement.

This Agreement continues on the following page.

IN WITNESS WHEREOF, this Agreement was executed by the Parties as of the date first above written.

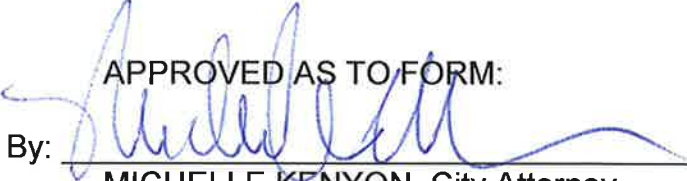
**CITY OF CALISTOGA**

By:   
DYLAN FEIK, City Manager

ATTEST:

By:   
KATHY FLAMSON, City Clerk


APPROVED AS TO FORM:

By:   
MICHELLE KENYON, City Attorney

**HOUSING AUTHORITY OF THE CITY OF NAPA, a public body, corporate and politic**

By:   
RICK TOOKER, Deputy Director

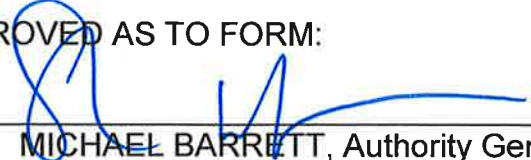
ATTEST:

By:   
DOROTHY ROBERTS, Deputy Authority Secretary

COUNTERSIGNED:

By:   
DESIREE BRUN, City Auditor

APPROVED AS TO FORM:

for By:   
MICHAEL BARRETT, Authority General Counsel

Sabrina S. Wolfson, Deputy City Attorney

## EXHIBIT "A"

### Scope of Work

WORK PROGRAM	DESCRIPTION
<b>A. COUNTYWIDE ACTIVITIES</b>	
1. Section 8 Housing Services	HUD-funded very low income rental housing assistance program administered countywide - 88% City of Napa & 12% countywide
2. Continuum of Care	Participate in Countywide Continuum of Care for delivery of homeless services & projects
<b>B. STANDARD HOUSING SERVICES</b>	
1. Regulatory Agreement Monitoring	Provide required annual monitoring of regulatory agreement units summarized in Exhibit B
2. Review development projects	Technical assistance reviewing proposed housing developments to maximize affordable housing units
3. Loan Servicing	Provide loan servicing and owner occupancy monitoring for HOME & CDBG rehab loans
4. Affordable Housing Regulatory Agreements	Review affordable housing agreements & make recommendations
5. Annual Meeting with Staff and Council	Report on year's activities
<b>C. ADDITIONAL HOUSING SERVICES</b>	
1. Additional housing services as mutually agreed to	TBD: The Authority shall be compensated for such additional services in accordance with Section 3(d).

## EXHIBIT “B”

### MONITORING DETAIL

Project	Type	Affordable Units	Task	Description
Palisades	SFSH	17	Annually	Mail out owner occupancy certification, verify insurance & taxes paid. Follow-up when necessary. Update owner database
Emerald Oaks	SFSH	1	Annually	Mail out owner occupancy certification, verify insurance & taxes paid. Follow-up when necessary. Up-date owner database
Silverado Place	SFSH	1	Annually	Mail out owner occupancy certification, verify insurance & taxes paid. Follow-up when necessary. Update owner database
Saratoga Manor II	SFSH	17	Annually	Mail out owner occupancy certification, verify insurance & taxes paid. Follow-up when necessary. Update owner database
Lakewood I 1809 Lake St.	Rental	8	Annually	Review Calistoga Affordable Housing, Inc. annual report & tenant certification forms for compliance with Affordable Housing Agreement #0210 & Loan Agreement #0210
Palisades Apts 40 & 42 Brannan St.	Rental	24	Annually	Review Burbank Housing annual report & tenant certification forms for compliance with Affordable Housing Agreement #0248 & HOME Standard Agreement #07-HOME-3063. Submit Annual Long Term Monitoring Report to HCD. Collect annual monitoring fee.
Paladini Apts	Rental	4	Annually	Review property owner's annual report and tenant certification forms for compliance with Affordable Housing Agreement. Collect annual monitoring fee.
Luxe Calistoga - Garnett Creek Inn 1139 Calistoga St.	Rental	4	Annually	Review property owner's annual report and tenant certification forms for compliance with Affordable Housing Agreement. Collect annual monitoring fee.
HOME Loans	Rehab	20	Annually	Loan servicing & owner occupancy certification, verify insurance and taxes or HCD registration paid. Follow-up when necessary. Update Rehab database.
Calistoga Senior Apts 611 Washington Street	Rental	29	Annually	Lease up certification. Review annual reports & tenant certification forms for compliance with the Affordable Housing Agreement.

**PROFESSIONAL SERVICES AGREEMENT  
UpValley Family Centers for Immigration-Related  
Programs and Support Services to Immigrants, Residents and  
Members of the Calistoga Community**

**Authorizing Agreement No. 781**

THIS AGREEMENT is entered into as of this 19th day of June 2017, by and between the CITY OF CALISTOGA herein called the "City", and UPVALLEY FAMILY CENTERS, herein called the "Consultant".

**Recitals**

WHEREAS, City desires to provide assistance to members of the community including free legal and support services; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement; and

WHEREAS, there are no other free legal and support services available to undocumented members of the community.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **Scope of Services.** Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. **Time of Performance.** The services of Consultant are to commence no sooner than July 1, 2017 and, subject to City Council approval, be completed not later than June 30, 2018. Any changes to these dates must be approved in writing by the City Manager or his or her designee.

3. **Compensation and Method of Payment.**

A. **Compensation.** The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall in no event exceed Thirty Thousand Dollars (\$30,000). Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment. The City may request any information or documentation from Consultant to verify services are being performed according to terms located herein.



B. Timing of Payment. Billing for said services may be made on an equally quarterly basis. City shall review Consultant's statement and pay Consultant for services rendered within thirty (30) days of receipt of the Consultant's statement.

C. Changes in Compensation. Consultant will not undertake any work for which the City is obligated to pay that will incur costs in excess of the amount of Thirty Thousand Dollars (\$30,000) during the term of this Agreement.

D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Interest of Consultant.

A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

5. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this

Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

6. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

7. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

9. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

10. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

11. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

12. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).

(c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification

of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best/Es rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

13. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

14. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 30 days' written notice. Consultant may terminate this Agreement upon 30 days' written notice.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.

15. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.

16. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award

17. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.

**If to City:** City of Calistoga  
Dylan Feik, City Manager  
1232 Washington Street  
Calistoga, CA 94515

19. Consultant's Books and Records.

B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City

Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

20. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

21. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

22. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

23. News Releases/Interviews: All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

24. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: \_\_\_\_\_

Dylan Feik

Title: City Manager

CONSULTANT

By: \_\_\_\_\_

Jenny Ocon

Executive Director

ATTEST:

Kathy Flamsa  
Kathy Flamsa, City Clerk



## **Exhibit A**

### **Scope of Work July 2018 – June 2019**

The UpValley Family Centers has experienced a significant increase in demand for assistance with immigration related needs by Calistoga residents due to changes in the implementation of federal immigration laws.

Through support from the City of Calistoga, UpValley Family Centers will provide free immigration services to low-income Calistoga residents. Services will include outreach, community education, individual consultations and application assistance to Calistoga residents on immigration-related matters. UpValley Family Centers is recognized by the US Department of Justice/Board of Immigration Appeals and has two partially-accredited representatives who are trained to assist with filing immigration applications with US Citizenship and Immigration Services. UpValley Family Centers is a member of the Napa County Citizenship Legal Services Collaborative and receives legal mentoring and support from International Institute of the Bay Area, and refers complex cases out. Below is the scope of work for 2018-19:

#### **▪ Immigrant Integration Program - \$30,000**

1. Provide 75 Calistoga residents with free legal screening/consultations and application assistance for US citizenship, Deferred Action for Childhood Arrivals (DACA), green card renewals, and U-Visas.
2. Provide 25 families with support completing Family Preparedness Plans. Connect 30 Calistoga residents applying for citizenship to local, free citizenship classes or tutors.
3. Provide 2 large community education workshops and 3 smaller group tailored workshops on immigration-related concerns that are present in the community, reaching a minimum of 110 people.
4. Conduct ongoing community outreach, distributing informational bulletins in English and Spanish throughout the community and via social media and the web.

**PROFESSIONAL SERVICES AGREEMENT**  
**UpValley Family Centers**  
**for Community Health, Education and Outreach Services**

**Authorizing Agreement No. 782**

THIS AGREEMENT is entered into as of this 19<sup>th</sup> day of June 2018, by and between the CITY OF CALISTOGA herein called the "City", and UPVALLEY FAMILY CENTERS, herein called the "Consultant".

**Recitals**

WHEREAS, City desires to obtain family health and community outreach services; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

**Agreement**

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **Scope of Services.** Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. **Time of Performance.** The services of Consultant are to commence no sooner than July 1, 2018 and, subject to City Council approval, be completed not later than June 30, 2019. Any changes to these dates must be approved in writing by the City Manager or his or her designee.

3. **Compensation and Method of Payment.**

A. **Compensation.** The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall in no event exceed Thirty Thousand Dollars (\$30,000). Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

B. **Timing of Payment.** Billing for said services may be made on an equally quarterly basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.

C. Changes in Compensation. Consultant will not undertake any work for which the City is obligated to pay that will incur costs in excess of the amount of Thirty Thousand Dollars (\$30,000) during the term of this Agreement.

D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Interest of Consultant.

A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

5. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

6. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or

otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

7. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

9. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

10. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

11. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

12. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).

(c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a BestAEs rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

13. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

14. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 90 days' written notice. Consultant may terminate this Agreement upon 90 days' written notice.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.

15. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.

16. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but

shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

17. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.

18. Written Notification. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Calistoga  
Dylan Feik, City Manager  
1232 Washington Street  
Calistoga, CA 94515

If to Consultant: UpValley Family Centers  
Jenny Ocón, Executive Director  
P.O. Box 213  
1500 Cedar Street  
Calistoga, CA 94515

19. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do



so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

20. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

21. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

22. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

23. News Releases/Interviews: All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

24. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: \_\_\_\_\_

Dylan Feik

Title: City Manager

CONSULTANT

By: \_\_\_\_\_

Jenny Ocon

Executive Director

ATTEST

Kathy Flamson  
Kathy Flamson, City Clerk

**Exhibit A**

**Scope of Work  
July 2018 – June 2019**

UpValley Family Centers is proud to partner with the City of Calistoga to provide much needed services for the residents of our town. Families served by UVFC are 80% monolingual Spanish speaking and 85% low-income earners.

For the 2018-2019 fiscal year, we propose the following scope of work:

▪ **Community Connections Program - \$10,000**

1. UVFC will provide broad education and outreach to families with children to inform them of all of the services provided locally by UVFC and its partner agencies, and the City of Calistoga. Specific populations for targeted outreach include single parent families, kin caregiver families, seniors and monolingual Spanish speakers. Outreach will include distribution of a monthly calendar through the schools, information on local television and radio stations, community presentations and personal phone calls. UVFC will participate or coordinate at least 3 resource fairs annually in Calistoga.
2. The UVFC Community Liaison will provide guided referrals for 100 families each month recreation services, housing resources, medical and dental services, prenatal care, health insurance, community resources, legal assistance, preschool and childcare opportunities, and other family supports. The Community Liaison will meet with families individually to select the appropriate local service.
3. UVFC will provide translation and application assistance for 100 families each month for rental and employment issues, food and shelter programs. The Community Liaison will assist to complete applications and to translate and explain documents.

▪ **Senior Community Needs Program - \$20,000**

1. Provide at least 100 seniors per quarter with individual support, making referrals, scheduling appointments and completing applications to maintain their health and quality of life.
2. Coordinate services for seniors to be offered in Calistoga, including Bay Area Legal Aid, Mentis, HICAP, Department of Health and Human Services/Medicare, Area Agency on Aging, Napa County Adult Protective Services, and Collabria Care.

3. Offer special programs, at least once per quarter, that provide respite or information for seniors including support groups, educational workshops and resource fairs.

## CONTRACT FOR CONSTRUCTION

### LAKE STREET PAVEMENT REHABILITATION PROJECT - WASHINGTON STREET TO FAIR WAY

THIS CONTRACT FOR CONSTRUCTION is made and entered into this 6th day of June, 2018 by and between the City of Calistoga, a municipal corporation, (hereinafter referred to as "City") and Northern Pacific Corporation, a California corporation, located at 870 Napa Valley Corporate Way, Suite R, Napa, CA 94558 (hereinafter referred to as "Contractor").

The City and the Contractor agree as follows:

- (1) **CONTRACT SUM:** The City agrees to pay, and the Contractor agrees to accept, in full payment for the above work, the sum of Four Hundred Ninety Seven Thousand Eight Hundred Seventy-Two dollars (\$497,872.00) is to be paid in accordance with the Contract Documents.
- (2) **COMPLIANCE WITH LAW:** The City is a public agency. All provisions of law applicable to public contracts are a part of this contract to the same extent as though set forth herein and will be complied with by the Contractor.
- (3) **CONTRACT DOCUMENTS:** The following Contract Documents relating to this Contract for Construction are hereby made a part of and incorporated by reference into this Agreement: The Notice Inviting Bids, Information for Bidders, Contract Proposal, Faithful Performance Bond, Labor and Materials Payment Bond, General Conditions, Supplemental Conditions, Special Provisions, Technical Specifications, State of California Department of Transportation Standard Plans and Specifications, 2015 edition, City of Santa Rosa Design and Construction Standards, most recent version, the Project Plans, duly issued addenda, duly Issued interpretations, approved change orders, preliminary construction schedule, Contractor's guarantee and bond, and supplemental agreements, certifications, and endorsements applicable to this work, with all modifications incorporated in said documents prior to receipt of the Contract Proposals. Any work called for in one contract document not mentioned in another is to be performed and executed the same as if mentioned in all Contract Documents.

This Agreement (including all documents referred to above and incorporated herein) represents the entire and integrated Agreement between City and Contractor for the Project and supersedes all prior negotiations, representations, or agreements, either written or oral.

This document may be amended only by written instrument, as provided in the General Conditions.

Contractors are required by law to be licensed and regulated by the Contractor's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation.

A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

This Agreement is effective upon approval by the City Council, execution by the Contractor and concurrence by the Agency's designated representative.

CITY OF CALISTOGA,  
a Municipal Corporation

By:   
Dylan Feik, City Manager

Dated: 6/20/18

ATTEST:

  
Kathy Flansburg, City Clerk

NORTHERN PACIFIC CORPORATION,  
a California Corporation

By:   
(Authorized Representative of Contractor)

Printed Name: Bradley E. Koeberer

Title: CEO

(Attach Acknowledgment for Authorized  
Representative of Contractor)

Date: June 15, 2018

(Contractor signature(s) must be notarized.)

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Napa

On June 15, 2018 before me, Cynthia D. Orme, Notary Public  
(insert name and title of the officer)

personally appeared Bradley E. Koeberer  
who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~  
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in  
his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the  
person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)



**PROFESSIONAL SERVICES AGREEMENT  
FOR ANIMAL CONTROL SERVICES  
WITH PETALUMA ANIMAL SERVICES FOUNDATION**

THIS AGREEMENT is entered into as of the 19 day of June, 2018, by and between the CITY OF CALISTOGA, herein called the "City," and Petaluma Animal Services Foundation, a nonprofit organization, herein called the "Contractor" (City and Contractor may be referred to individually or collectively as "Party" or "Parties").

Recitals

WHEREAS, California law requires that cities provide certain services for the prompt and humane care of injured animals; and

WHEREAS, the welfare of persons in Calistoga requires the control of animals at large; and

WHEREAS, City solicited proposals for the provision of animal control services and has determined that Contractor is the most suitable entity to provide animal control services; and

WHEREAS, Contractor hereby warrants to the City that Contractor has the qualifications, experience and facilities to provide such services described in Section 3 of this Agreement in a thorough, competent and professional manner; and

WHEREAS, City desires to retain Contractor pursuant to this Agreement to provide the services described in Section 3 of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the Parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The City Manager or designee is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Contractor. The Contractor shall assign Contractor's Executive Director, currently Jeff Charter, to have overall responsibility for the progress and execution of this Agreement for Contractor.

3. Scope and Performance of Services.



A. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Contractor shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by reference.

B. Time of Performance. The services of Contractor are to commence no sooner than June 1, 2018 and be completed not later than July 31, 2019, at which time the Parties shall meet and confer to evaluate the terms of the Agreement in consideration of amending and/or extending the Agreement.

C. Standard of Quality. City relies upon the professional ability of Contractor as a material inducement to entering into this Agreement. All work performed by Contractor under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Contractor's field of expertise.

D. Standard of Performance. Contractor shall assign only competent personnel to perform services pursuant to this agreement. City may request retraining or reassignment of Contractor employees, volunteers or subcontractors that have failed to perform the Services in accordance with this Agreement. The Contractor agrees to give reasonable consideration to such requests and to notify the City concerning action taken in response to the request. The Contractor shall be responsible for investigating complaints against personnel engaged in the performance of the animal control services pursuant to this Agreement and for taking any necessary corrective action in the event of a sustained finding of misconduct.

E. Background Checks. Each person or entity engaged in the performance of the Services, including, but not limited to, Contractor's employees, volunteers, subcontractors, and subcontractor employees must be a United States citizen or have a legal right to work in the United States. The Contractor must verify citizenship or legal right to work in the United States and retain an I-9 form for all persons or entities engaged in the performance of the Services. The Contractor must verify the employment eligibility and identity documents presented and record the document information on the Form I-9 for all persons to be engaged in the performance of the Services before they commence performance of the Services. No person designated by Contractor to perform animal control services may have been convicted of a felony or a crime relating to theft, violence, sexual misconduct or a violation of the California Health and Safety Code. Any violation of this provision shall constitute a default subject to termination of this Agreement.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Contractor, including both payment for professional services and reimbursable expenses, shall be at a fixed rate of thirty five thousand dollars (\$35,000) per year, paid in equal quarterly installments of eight thousand seven hundred and fifty dollars (\$8,750). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment. In addition Contractor shall retain fees collected in accordance with City animal control regulations as set forth in Chapter 6.04 of the Calistoga Municipal Code and any resolutions relating to these fees and charges.

B. Timing of Payment. Contractor shall submit itemized quarterly statements for work performed. City shall make payment for services rendered within thirty (30) days after approval of the invoice as meeting the all requirements of this Agreement by the Project Manager.

C. Changes in Compensation. Contractor will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 4(A) without prior written amendment to this Agreement.

D. Taxes. Contractor shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Contractor.

E. No Overtime or Premium Pay. Contractor shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Contractor shall not receive a premium or enhanced pay for work performed on a recognized holiday. Contractor shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Contractor agrees to testify at City's request if litigation is brought against City in connection with Contractor's work product. Unless the action is brought by Contractor or is based upon Contractor's negligence, City will compensate Contractor for the preparation and the testimony at Contractor's standard hourly rates, if requested by City and not part of the litigation brought by City against Contractor.

5. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Contractor. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Contractor shall not commence any work exceeding the Scope of Work without prior written authorization from the City. Failure of the Contractor to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, *quantum meruit*, etc. for work done without the appropriate City authorization.

6. Term. This Agreement shall commence upon its execution and shall continue in full force and effect until completed, amended pursuant to Section 21, or otherwise terminated as provided herein.

7. Inspection. Contractor shall furnish City with every reasonable opportunity for City to ascertain that the services of Contractor are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Contractor of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other final work products compiled by the Contractor under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. Contractor may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

9. Employment of Other Contractors, Specialists or Experts. Contractor will not employ or otherwise incur an obligation to pay other Contractors, specialists, or experts for services in connection with this Agreement without the prior written approval of the City.

10. Conflict of Interest.

A. Contractor covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Contractor's performance of services under this Agreement, or be affected in any manner or degree by performance of Contractor's services hereunder. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Contractor agrees at all times to avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of this Agreement.

B. Contractor is not a designated employee within the meaning of the Political Reform Act because Contractor:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Contractor or otherwise in the event of any default or breach of the City, or for any amount which may become due to Contractor or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Contractor hereby agrees to defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City, its officers, agents, employees, volunteers, and servants, from and against any and all claims,

demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Contractor, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of City. The City has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Contractor's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778.

This indemnification obligation is undertaken in addition to, and shall not be limited in any way by any limitation on the amount or type of damages or compensation payable by or for Contractor under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Contractor and shall survive and continue to bind the parties after termination/completion of this Agreement for the full period of time allowed by law.

Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-contractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or this section.

13. Contractor Not an Agent of City. Contractor, its officers, employees and agents shall not have any power to bind or commit the City to any decision, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement.

14. Independent Contractor. It is expressly agreed that Contractor, in the performance of the work and services agreed to be performed by Contractor, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Contractor shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Contractor hereby expressly waives any claim it may have to any such rights. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City.

15. Compliance with Laws.

A. General. Contractor shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Contractor represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Contractor to practice its profession and perform the services under this Agreement. Contractor shall maintain a City business license. The City is not responsible or liable for Contractor's failure to comply with any or all of the requirements contained in this paragraph.

B. Workers' Compensation. Contractor certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Contractor and Contractor's subcontractors (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

D. Injury and Illness Prevention Program. Contractor certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Contractor's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Contractor and Contractor's insurance company agree to waive all rights of subrogation against City, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under Contractor's workers' compensation insurance policy which arise from the work performed by Contractor for the City.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information to any person or entities other than the City without prior written authorization from the City Manager, except as may be required by law.

Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement.

Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of Contractor's conduct.

Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Contractor from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Contractor to defend itself from any suit or claim.

17. Assignment; Subcontractors; Employees.

A. Assignment. Contractor shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Contractor shall be responsible for employing or engaging all persons necessary to perform the services of Contractor hereunder. No subcontractor of Contractor shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Contractor, and Contractor agrees to be responsible for their performance. Contractor shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Contractor fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

C. Subcontractor Requirements. Contractor agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement, including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and the City in the same manner and to the same extent as Contractor is bound to the City under this Agreement. Contractor further agrees to include these same provisions with any sub-

subcontractor and to furnish a copy of the indemnity and insurance provisions of this Agreement to the subcontractor upon request. The Contractor shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and will provide proof of compliance to the City.

18. Insurance.

A. Minimum Scope of Insurance. Contractor and all of Contractor's employees, subcontractors, and other agents shall procure, provide and maintain at all times during the performance of this Agreement, and for such additional periods as described herein, the insurance listed below:

(1) Contractor agrees to have and maintain, for the duration of this Agreement, a General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Contractor agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Contractor shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor or by its employees, subcontractors, or subcontractors. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Contractor:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its officials, officers, agents, employees, and volunteers (Additional Insureds) are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Contractor shall provide to City all certificates of insurance with original endorsements effecting coverage required by this paragraph. Certificates of such insurance shall be filed with City on or before commencement of performance of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, officers, agents, employees, and volunteers.

(8) Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(9) It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insureds. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(10) The limits of insurance required in this Agreement may be satisfied by combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to City. Current certification of such insurance shall be kept on file with the City Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers licensed to do business in the State of California and with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City and shall not reduce the limits of liability. Policies contain any self-insured retention provisions shall provide or be endorsed to



provide that the self-insured retentions may be satisfied by either the named insured or the City. At the City's option, Contractor shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Contractor shall furnish the City with original Certificate(s) of Insurance verifying Contractor's receipt of the insurance coverage required herein. The City reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

F. Material Breach. If Contractor fails to maintain insurance coverage or provided insurance documentation which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. City, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, City may purchase the required insurance coverage, and without further notice to Contractor, may deduct from sums due to Contractor any premium costs advanced by City for such insurance. These remedies shall be in addition to any other remedies available to City.

19. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon thirty (30) days' written notice to Contractor.

B. If Contractor fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Contractor bear to the total services otherwise required to be performed for such total fee; provided, however, that the City shall deduct from such amount the amount of damages, if any, sustained by City by virtue of the breach of this Agreement by Contractor.

C. Alternatively, if Contractor is in default under the terms of this Agreement, the City may, but has no obligation to, give notice to Contractor of the default and include the timeframe in which Contractor may cure the default. During the period of time that Contractor is in default, the City may, in its sole discretion, either: (1) hold all invoices and proceed with payment on the invoices when the default is cured, or (2) may elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not timely cure the default, the City may take necessary steps to terminate this Agreement.

D. In the event this Agreement is terminated by City without cause, Contractor shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment.

E. Upon termination of this Agreement with or without cause, Contractor shall turn over to the City Manager immediately any and all copies of studies, sketches,

drawings, computations, and other data, whether or not completed, prepared by Contractor or its subcontractors, if any, or given to Contractor or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Contractor, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Contractor to perform any provision of this Agreement. Contractor will be paid for satisfactory Services performed through the date of temporary suspension.

21. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Contractor and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Contractor. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void. All provisions of this Agreement are expressly made conditions.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and shall be personally delivered, sent by reputable overnight courier, facsimile or electronically and shall be deemed received upon the earlier of: (1) if personally delivered, the date of delivery to the address of the person to receive such notice; (2) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day; (3) if sent by facsimile, with the original sent on the same day by overnight courier, the date on which the facsimile is received, provided it is before 5:00 P.M. Pacific Time; or (4) if sent electronically, the date of delivery on the confirmed read receipt. Notice of change of address shall be given by written notice in the manner described in this Section. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to City: City Clerk  
City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515  
Fax: (707) 942-0732  
Email: KFlamson@ci.calistoga.ca.us

If to Contractor: Executive Director  
Petaluma Animal Services Foundation (PASF)  
911 Lakeville St. PMB 246  
Petaluma, CA, 94952  
Fax:  
Email: jeff@petalumaaanimalshelter.org

26. Contractor's Books and Records.

A. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

C. The City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in the City Manager's office.

27. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

28. Equal Employment Opportunity. Contractor is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Contractor will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Contractor will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following:

employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

29. Unauthorized Aliens. Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

30. City Not Obligated to Third Parties. The City shall not be obligated or liable for payment hereunder to any party other than the Contractor.

31. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

32. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

33. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

A. Exhibit A: Scope of Work

34. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

35. News Releases/Interviews. All Contractor and subcontractor news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

36. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the

parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

37. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

IN WITNESS WHEREOF, the City and Contractor have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

CONSULTANT

By: 

By: 

*Acting* City Manager

Title: Executive Director

Date: 7/19/2018

Date: 8/10/18

APPROVED AS TO FORM:

By: 

City Attorney

ATTEST:

By: 

City Clerk

EXHIBIT A:  
City of Calistoga and Petaluma Animal Control Services Professional Services Agreement

Scope of Work

1. ON-CALL ANIMAL CONTROL SERVICES AND STAFFING.

A. On-Call Emergency Response. Contractor shall provide City with qualified animal control officers who shall be dispatched and respond to any and all calls for domestic animals and domestic animal-related emergencies from Police Dispatch. An animal-related emergency involves a domestic animal that poses a threat to the safety of persons, other animals, or itself, and includes severely injured or sick animals that require humane transportation to veterinary care or euthanasia.

Said animal control officers shall be available to respond to calls for service twenty-four (24) hours a day, seven (7) days a week, including weekends and holidays. Said animal control officers shall arrive to the scene on public or private property in the city limits of Calistoga within sixty (60) minutes of receiving a call for service from Police Dispatch and shall humanely capture, control, secure and convey stray, sick, injured and deceased domestic animals to the City's designated shelter at 5345 CA-12, Santa Rosa, CA 95407.

B. Ongoing Services. Contractor shall provide City with qualified animal control service officers who, as provided for in Calistoga Municipal Code Chapter 6.04 (Animal Control) and any implementing resolutions, shall provide all of the following services:

- (1) Establish and administer the licensing of dogs as may be amended from time to time;
- (2) Collect fees related to impound, surrender, dog licensing, and related enforcement activities;
- (3) Identify and contact owners of impounded animals and make arrangements for their return.
- (4) Assist City Police in animal-related matters, including but not limited to: removal of animals from streets affecting traffic, investigations of vicious animals, and investigations of animal bites, animal cruelty, neglect and/or inhumane animal treatment. Such assistance may include providing support to City Police in building animal-related criminal cases.
- (5) Submit quarterly written reports to Chief of Police detailing the services provided that quarter and an account of fees collected. The format and extent of information will be provided by Police Chief.
- (6) Provide advice, materials, and/or assistance in: the rescue of animals from roofs, trees, fences, storm drains, and other at, above, or below ground locations within reasonable safety limits.
- (7) Make available animal control officers to attend and testify in court or administrative hearings. The costs for these appearances shall be the sole responsibility of the Contractor.

C. Excluded Services. Nothing in this Agreement shall require Contractor to: (1) provide for a routine patrol for stray dogs, (2) provide services for wildlife (such as deer, opossums, and raccoons), pests (such as insects, mice or rats), or non-domestic animals (such as horses, bovines, and sheep), or (3) respond to or investigate animals suspected to be rabid and/or

that have bitten a person or other animal (which shall be handled by Napa County Sheriff's Office). Citizens wishing to provide voluntary transport of a stray, sick, injured and deceased animals may be directed by Contractor to the City's designated shelter or, if appropriate, to an approved, local veterinarian for emergency care or euthanasia.

D. Animal Control Officers. Subject to the terms and conditions of this Agreement, the animal control services officers provided by Contractor shall be certified as such under Penal Code Section 832 and shall be designated as and vested with the authority of "Animal Control Services Officers" for the purposes of Calistoga Municipal Code Chapter 6.04 (Animal Control). As such, the animal control services officers provided by Contractor may enforce animal-related state and local laws and regulations related to animals, issuing citations when appropriate. Contractor shall maintain all training records for its animal control services officers.

## 2. ANIMAL SHELTER FACILITY, EQUIPMENT, SERVICES, AND STAFFING.

A. Animal Shelter Facility and Equipment. Contractor shall provide City with an animal shelter facility at 5345 CA-12, Santa Rosa, CA 95407, which shall be equipped in the manner necessary to provide the services required by this Agreement. Prior to operating any animal shelter, the facility shall be inspected and approved by the City to ensure that it meets the requirements of this Agreement, related City codes and applicable laws.

The Contractor shall provide the necessary equipment to outfit the animal shelter and to enable the animal shelter operators to perform their duties as set forth in this Scope of Work, which may include, but not be limited to, kennels, examination tables, equipment and food storage, uniforms, identification badges, and communication devices.

City may conduct periodic inspections of the animal shelter facilities, equipment and other property furnished by Contractor for use in performing the services under this Agreement. If the City finds that repairs or changes are required in connection with this Agreement, the Contractor shall, within thirty (30) days of receipt of notice from the City, place in satisfactory condition all of such animal shelter facilities, equipment and other property, correct all defects therein, and make good on all damages. If Contractor fails to correct any such damage at Contractor's expense, the City may treat any failure as a default subject to termination under this Agreement.

B. Animal Shelter Services. Contractor shall provide City with animal shelter services and qualified animal shelter operators who shall maintain the animal shelter facilities, equipment and other property consistent with the following requirements. Specifically, Contractor shall:

(1) Staffing. Adequately train and staff the animal shelter facilities with qualified animal shelter operators, in accordance with state law.

(2) Public Hours. Staff and hold open the animal shelter facilities to the public, at a minimum, from 12:00 PM to 6:00 PM, Tuesdays, Wednesdays and Thursdays; 10:00 AM to 7:00 PM Fridays and Saturdays; 10:00 AM to 5:00 PM on Sundays.

(3) Basic Services. Accept, shelter, feed, provide routine in-take medical and emergency care, and otherwise provide for abandoned, stray or unwanted domestic animals, on a twenty-four (24) hours a day, seven (7) days a week basis, that are surrendered by Calistoga residents, delivered by animal control officers, or delivered by City personnel for the minimum impoundment and stray hold periods established in the Calistoga Municipal Code and state law.

(4) Sanitation Standards. Adhere to and utilize the UC Davis Medicine guidelines for sanitation and cleaning protocols of the shelter facility and animal storage and treatment areas.

(5) Quarantines. Provide a means of isolating animals with Police holds or quarantines, or animals held in protective custody in a manner that will not expose other sheltered animals or the public at risk. Contractor shall document and monitor all animals under quarantine and, when necessary, obtain a lab sample of the animal and prepare the necessary paperwork to accompany the sample to the Health Department for testing.

(6) Euthanasia. Provide for humane euthanasia if deemed appropriate by the attending, licensed veterinarian.

(7) Disposal. Provide for the lawful disposal of the remains of animals, including the cremation of euthanized animals.

(8) Owner Search and Notices. Make reasonable attempts to find the rightful owner of animals in their custody, including scanning animals for the presence of a microchip and initiating a search for the owner through the microchip vendor. Contractor shall notify owners as established by state or local law, rule or ordinance or, if none, as set forth by Contractor.

(9) Adoptions. Make reasonable adoption opportunities available for animals after the mandatory stay period has run and process all owner redemptions and adoptions of animals.

(10) Licensing. Provide for licensing of dogs consistent with the requirements of the Calistoga Municipal Code.

(11) Coordination with Animal Control. Liaison with City's designated animal control officer(s), including providing training and updates to the animal control officer(s) and Calistoga Police personnel on the basic policies and procedures of the animal shelter.

(12) Access. Provide, at a minimum, access, at all times, to the City's designated animal control officers and Calistoga Police with access to exterior drop-off kennels at the animal shelter and one (1) exterior drop-off kennel at the Calistoga Police Department or other location as deemed appropriate by the City.

(13) Programs. Provide programs and services that reduce euthanasia rates and shelter overcrowding while providing proper and compassionate care for the animals entrusted to them. Contractor may provide other programs it deems appropriate, such as low cost spay and neuter programs, foster care programs, training and behavioral programs, public education, and post adoption support and advice.

(14) Vaccinations. Provide for standard vaccinations of cats and dogs upon intake.

(15) Volunteers. Contractor may maintain an active volunteer program, which shall include a background and screening process, training, coordination and supervision by Contractor.

C. Veterinary Services. Contractor shall be responsible for hiring or (sub)contracting with one or more veterinarian(s) or other subcontractors in order to carry out its duties under this Agreement. As provided for in this Agreement, Contractor shall incorporate provisions of this Agreement, including but not limited to the insurance and indemnification clauses, into any and all agreements with said veterinarian(s) or other subcontractors. Prior to executing any such agreement, Contractor shall provide City with a copy of the agreement for review and



confirmation that the terms and conditions of this Agreement have been satisfied and that the veterinarian(s) or other subcontractors are qualified to undertake the activities required under this Agreement.

D. Housing of Animals. Contractor will be solely responsible for the costs associated with the care and feeding of animals during the required holding periods and for any time periods beyond the minimum impoundment periods established in Calistoga Municipal Code Chapter 6.04.

E. Excluded Services. Nothing in this Agreement shall require Contractor to be responsible for livestock (such as horses, bovines, or sheep) or wild animals (such as deer, possums, raccoons, foxes, etc.) or exotic animals (birds, snakes, reptiles, etc.).

### 3. IMPOSITION AND COLLECTION OF FEES.

A. Imposition of Fees. As provided for above, Contractor shall impose fees related to impound, surrender, adoption, dog licensing, and related enforcement activities on the responsible party. Said fees shall be set by the City pursuant to Calistoga Municipal Code Chapter 6.04 (Animal Control). The maximum fees for service shall be set by the City pursuant to Calistoga Municipal Code Chapter 6.04 (Animal Control). City shall provide Contractor with a schedule of all adopted fees and any updates or amendments to said fees, which shall be attached to this Agreement and made a part thereof. Contractor shall set and charge fees consistent with and, in no event, in excess of these adopted fee schedules.

B. Collection of Fees. Contractor shall collect applicable fees for animal control services from the responsible party. To the extent that, following a diligent effort to identify a responsible party, a responsible party cannot be determined, the fee will be treated as an operating cost of Contractor, and Contractor shall be solely responsible for any and all such fees. In no event shall City reimburse Contractor for expenses that have been paid by another party or for the services of volunteers.

### 4. EQUIPMENT.

A. Contractor's Equipment. The Contractor shall provide the necessary equipment for the designated animal shelter, the animal control officers and Contractors' other agents to perform their duties as set forth in this Scope of Work, which may include, but not be limited to, an animal control vehicle, traps, safety equipment, medications, pharmaceuticals, collection equipment, uniforms, identification badges, and communication devices.

B. City's Communication System. The City will seek to allow programming of Calistoga Police Department radio equipment to allow Contractor's animal control officers to communicate with the Calistoga Police Department dispatch center on at least one (1) handheld radio per animal control officer and one (1) mobile radio per animal control vehicle. Until such time that this approval and programming occurs, the City shall provide at least one (1) handheld Calistoga Police two-way radio for shared use by animal control officers. Contractor shall ensure

that any and all employees utilizing police radios have received proper training from the Calistoga Police Department in the use and care of the equipment.

## 5. COMMUNICATIONS AND RECORD KEEPING.

A. Notification. Contractor's animal control officers shall notify the Calistoga Police Department dispatch center via radio (when this capability is provided) whenever they come into the City of Calistoga for: (1) a response to a call for service, or (2) follow-up investigation of a previously reported incident. Calistoga Police Dispatch will create an event in their CAD/RMS system for all calls for service or investigation activities initiated by an animal control officer.

Contractor's animal shelter operators shall maintain operations logs and records consistent with the prevailing recordkeeping practices in the industry. Contractor's recordkeeping obligation shall include drafting and maintaining documentation on each animal brought in, including an inventory of the animal type, breed, sex, license tag number (if applicable), microchip information (if available), date animal was received, from whom the animal was received, the date a notification letter was sent, and the final disposition of the animal. Contractor shall also keep and maintain records outlining all activities performed including but not limited to general services, adoptions, euthanasia procedures, surgical procedures, vaccinations, accounts payable and receivable, programs, events, presentations and any other activities that outlines or illustrates the services provided by Contractor.

B. Updates. Animal control officers shall provide radio status updates whenever conditions change, such as: (1) arrival on the scene; (2) change of location; (3) action being taken; (4) no further assistance needed; and (5) call completed. A disposition must be provided, such as arrested, cited, warned, advice given, or report taken whenever a call is completed.

C. Written Reports. Animal control officers shall prepare written reports of all service calls, which shall be documented on Calistoga's Police Department's CAD/RMS application(s). Calistoga Police Department will provide training to Animal Control Officers on the proper use of their CAD/RMS application(s). If possible, dog licenses and animal-related permits should be readily searchable and/or accessible for use by animal control officers and City staff in the performance of their duties.

D. Inspection. All of Contractors records shall be made available for inspection by the City as requested.

## 6. REVIEW OF SERVICES.

The Chief of Police of the Calistoga Police Departments, or his or her designee, will meet at least once per fiscal year with the Contractor's Executive Director to discuss animal control services, including but not limited to, adherence to this Scope of Work.

**PROFESSIONAL SERVICES AGREEMENT**  
**Traffic Study for the Lincoln Avenue Apartments Project**  
**Authorizing Agreement No. 785**

THIS AGREEMENT is entered into as of the 1 day of August, 2018 by and between the CITY OF CALISTOGA herein called the "City," and Whitlock & Weinberger Transportation, Inc. (W-Trans), herein called the "Consultant".

Recitals

WHEREAS, City desires to obtain traffic study services in connection with the Lincoln Avenue Apartments Project; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. Time of Performance. The services of Consultant are to commence no sooner than the date written above and, be completed not later than eight weeks from the same. Any changes to these dates must be approved in writing by the Planning and Building Director or his or her designee.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A". However, in no event shall the amount exceed Nine Thousand Four Hundred Dollars (\$9,400). Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Billing for said services may be made on a monthly basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount of Nine Thousand Four Hundred Dollars (\$9,400).

D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action

is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents, shall become the sole property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Any modifications made by the City to any of the Consultant's documents or any partial use or reuse of the documents without the express written consent of the Consultant will be at the City's sole risk and without liability to the Consultant and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.

5. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the City.

6. Interest of Consultant.

A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

7. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

8. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

9. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

10. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

11. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

12. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

13. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

14. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy insuring him/her and his/her firm to an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and in the aggregate for bodily injury, personal injury and property damage.

(2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).

(c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any

self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Each insurance policy required in this item shall provide that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file with the City Secretary at all times during the term of this Agreement.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best/Es rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

15. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

16. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 5 days' written notice. Consultant may terminate this Agreement upon 30 days' written notice.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.

17. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.

18. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

19. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.

20. Written Notification. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Calistoga  
City Manager  
1232 Washington Street  
Calistoga, CA 94515

If to Consultant: Whitlock & Weinberger Transportation, Inc.  
490 Mendocino Ave., Suite 201  
Santa Rosa, CA 95401

## 21. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.



B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

22. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

23. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

25. News Releases/Interviews: All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

26. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

WHITLOCK & WEINBERGER  
TRANSPORTATION, INC.

By: \_\_\_\_\_

  
Dylan Feik, City Manager

By: \_\_\_\_\_

  
Dalene J. Whitlock, Principal

ATTEST

  
Kathy Flamson, City Clerk



July 19, 2018

Ms. Lynn Goldberg  
City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515

## **Proposal to Prepare a Traffic Study for the Lincoln Avenue Apartments Project**

Dear Ms. Goldberg;

W-Trans is pleased to provide this proposal to evaluate potential traffic impacts associated with the Lincoln Avenue Apartments to be located in the City of Calistoga. We understand that the project as proposed includes 78 apartment units that would take access from Lincoln Avenue northwest of Brannan Street. The following scope of services is suggested to identify the project's potential impacts based on our experience with numerous other traffic studies for projects in Calistoga.

### **Study Area and Periods**

The study area will consist of Lincoln Avenue fronting the project site and the project access points as well as the following intersections. Conditions during the weekday a.m. and p.m. peak periods will be documented.

1. Lincoln Avenue/Lake Street-Silverado Trail North
2. Lincoln Avenue/Brannan Street-Wappo Avenue

### **Tasks**

1. A field visit of the project site and study area will be conducted. Specific attention will be paid to sight distance for both exiting and entering movements at the site's driveway and potential conflicts with other driveways. Appropriate field notes and photos will be taken.
2. Turning movement counts will be collected at the study intersections for both peak periods.
3. Existing conditions will be documented based on the counts obtained and observations during the site visit.
4. Collision records for the study intersections will be reviewed for any trends or patterns, and the intersection collision rates calculated. Special attention will be paid to collisions involving drivers turning into driveways.
5. Future volumes at the study intersections as developed for the City's impact fee report will be used to project future operating conditions assuming planned future infrastructure improvements. Note that any development assumed for the project site will be deducted from these future volumes to achieve the "without project" results.
6. The trip generation for the project will be determined based on standard rates published by ITE in *Trip Generation Manual*, 10<sup>th</sup> Edition, 2017. Distribution patterns will be estimated based on census data as well as anticipated travel patterns for site residents. This information will be provided to staff in an email for review and concurrence prior to application of these assumptions.
7. Project trips will be distributed to the roadway network and operating conditions at the study intersections evaluated under Existing plus Project and Future plus Project conditions.

Ms. Lynn Goldberg

Page 2

July 19, 2018

8. Adequacy of facilities for pedestrians, bicyclists, and transit riders will be evaluated within the context of the City's *Active Transportation Plan*, 2014.
9. Trips from the project will be used to evaluate potential need for improvements at the project driveway to accommodate project-generated traffic. The need for turn lanes will be evaluated in terms of volume, adequacy of sight distance and safety considerations.
10. The required parking supply will be estimated based on agency requirements as well as standard parking demand rates.
11. Recommendations to address any impacts identified will be provided and presented graphically, if appropriate.
12. A draft report that provides details of the analysis and findings, together with tables and figures, will be prepared and submitted for your review. Copies of the calculations will be included.
13. Because Lincoln Avenue is a State Highway, it is assumed that the report will be referred to Caltrans for review and comment. This can be a separate report after addressing City staff comments, or a simultaneous review.
14. Comments from City and/or Caltrans staff will be addressed and a final report submitted. Comments that require analysis not included in the original scope of work will be considered beyond the scope of our contract.

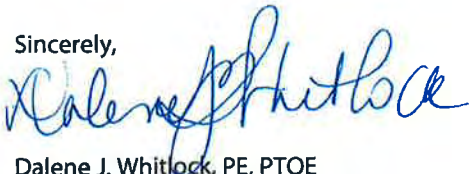
**Exclusions** – The scope of services includes only those items that are specifically identified above. Any additional services, such as meetings or hearings, requests for further analysis, multiple rounds of comments, or responding to peer review comments, if needed would be provided on a time and materials basis after receiving written authorization for the extra work.

### **Schedule and Budget**

The draft report can be submitted for your comments within approximately six to eight weeks following receipt of the signed contract assuming timely confirmation of the trip generation and distribution assumptions by City staff. Our services will be conducted on a fixed fee basis. Monthly invoices will be provided electronically unless a hard copy via mail is requested. The fee for this work is \$9,400.

Please provide your contract forms or a Purchase Order if you wish to initiate work. This proposal will remain a firm offer for 90 days from the date of this letter. Thank you for giving us the opportunity to propose on these services.

Sincerely,



Dalene J. Whitlock, PE, PTOE  
Principal

DJW/djw/CAL049.P1

## **PROFESSIONAL SERVICES AGREEMENT**

### **Building Permit Fee Study**

### **Authorizing Agreement No. 786**

THIS AGREEMENT is entered into as of the 1<sup>ST</sup> day of August, 2018 by and between the City of Calistoga, herein called the "City," and MGT Consulting Group, herein called the "Consultant."

#### Recitals

WHEREAS, City desires to evaluate both its current building permit fees and identify potential additional fee changes or additions necessary to ensure proper cost recovery; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

#### Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A," dated March 19, 2018, and incorporated herein by reference.
2. Time of Performance. The work described in Exhibit "A" is to be completed by the Consultant not later than four (4) months from the effective date of this agreement. Any changes to these dates must be approved in writing by the Planning & Building Director or their designee.
3. Compensation and Method of Payment.
  - A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A". In no event shall the amount exceed Nineteen Thousand Six Hundred Ten (\$19,610) without approval in writing by the Planning & Building Director or their designee.

Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
  - B. Timing of Payment. Billing for said services may be made on a monthly basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.
  - D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents, shall become the sole property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Any modifications made by the City to any of the Consultant's documents or any partial use or reuse of the documents without the express written consent of the Consultant will be at the City's sole risk and without liability to the Consultant and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.
5. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services, except as otherwise included in the Scope of Work, without the prior written approval of the City.
6. Interest of Consultant.
  - A. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

    - (1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and
    - (2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)
7. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

8. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.
9. Indemnification of City. Consultant hereby agrees to defend, indemnify and save harmless the City, its officers, agents, employees and servants, from and against any and all claims, liability or obligations based on negligence or willful misconduct brought on account of or arising out of any acts, errors or omissions of Consultant undertaken pursuant to this Agreement. The City has no liability or responsibility for any accident, loss or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Consultant's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
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  - A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.
  - B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.
  - C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

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- A. Minimum Scope of Insurance.
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  - (2) Consultant agrees to have and maintain for the duration of the contract an Automobile Liability insurance policy insuring him/her and his/her staff to an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and property damage.
  - (3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or sub-consultants. The amount of this insurance shall not be less than One Million Dollars (\$1,000,000.00) on a claims-made annual aggregate basis.
  - (4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:
    - (a) This policy shall provide coverage for Workers' Compensation (Coverage A).
    - (b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).
    - (c) Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officials, officers, employees, volunteers, and agents.
  - (5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:
    - (a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."



- (b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."
      - (c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
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    - (1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
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  - D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best's rating of no less than A:VII.
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- A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 5 days' written notice. Consultant may terminate this Agreement upon 30 days' written notice.

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  - C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.
  - D. In the event termination is without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.
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  19. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.
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If to City: City Of Calistoga  
City Manager  
1232 Washington Street  
Calistoga, CA 94515

**If to Consultant:** Brad Burgess, Executive Vice President  
MGT Consulting Group  
2251 Harvard Street, Suite 134  
Sacramento, CA 95815

21. Consultant's Books and Records.

- A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.
- B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.
- D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

22. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.


23. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
25. News Releases/Interviews: All Consultant and sub-consultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.
26. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

MGT CONSULTING GROUP

By:   
Dylan Feik, City Manager

By:   
J. Bradley Burgess,  
Executive Vice President

ATTEST

  
Kathy Flamsa, City Clerk

SUBMITTED VIA EMAIL

MARCH 19, 2018



SUBMITTED TO:

BRAD CANNON, CBO  
BUILDING OFFICIAL  
CITY OF CALISTOGA  
PLANNING & BUILDING DEPT.

1232 WASHINGTON STREET  
CALISTOGA, CA 94515  
707.942.2825

# PROPOSAL FOR A BUILDING PERMITTING USER FEE STUDY

CITY OF CALISTOGA, CALIFORNIA

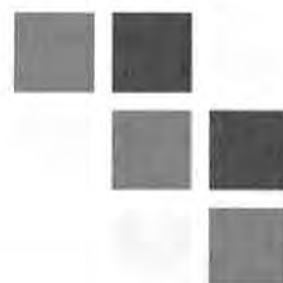
SUBMITTED BY:

J. BRADLEY BURGESS  
EXECUTIVE VICE PRESIDENT

2251 HARVARD STREET, SUITE 134  
SACRAMENTO, CA 95815

916.443.3411

[bburgess@mgtconsulting.com](mailto:bburgess@mgtconsulting.com)





March 19, 2018

Brad Cannon, CBO  
Building Official  
City of Calistoga Planning & Building Dept.  
1232 Washington Street  
Calistoga, CA 94515  
(P) 707.942.2825  
(C) 707.975.2461

**RE: Proposal for Building Permit User Fee Study**

Dear Mr. Cannon,

Thank you for contacting MGT Consulting and requesting a proposal for a building permits user fee study. Our proposal for these services is attached.

We have put together a terrific team of consultants to work on this project, and I am certain that the City will be very happy with the results of this engagement.

Please contact me with any questions at **916.595.2646**. Thank you!

Sincerely,

A handwritten signature in black ink, appearing to read "J. Burgess", with a large, stylized flourish at the end.

J. Bradley Burgess  
Executive Vice President  
MGT of America Consulting, LLC

Attachment



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## PROJECT SUMMARY

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The City of Calistoga (City) has requested consulting assistance to prepare a user fee study for building permits.

### USER FEE STUDY

The anticipated user fee study will evaluate both current fees and identify potential additional fee changes or additions necessary to ensure proper cost recovery. This study is also an MGT of America specialty, and as a consulting group, we have delivered more of these analyses to more governmental jurisdictions than all our current competition combined. Our analysis will allow the City to meet its objectives of having a comprehensive and easily understandable cost analysis, legally defensible user fees, calculations that support full cost recovery of each current and potential user fee, and recommendations for the appropriate fees to be charged for each service. All direct and indirect costs will be identified and indirect costs will be allocated on a rational, federally approved basis.

### MGT PROJECT TEAM

The proposed MGT project team has unmatched qualifications for the services requested and is the same project team that recently assisted the County of Napa with its cost of service study. Erin Payton, our proposed project director, has performed more user fee studies than any other consultant in the nation. Cindy Sconce will assist with the user fee study, while Ruben Rivas will assist with data acquisition and analysis. This project team will work together to conduct this study for all three departments concurrently, and will request one set of financial data which will be used for both projects.

**J. Bradley Burgess is the national managing executive for MGT Financial Services. He will be the executive-in-charge for Calistoga's project. He will be responsible for all questions and negotiations for this engagement.**

His contact information is:

#### **Project Contact and Authority to Contract**

J. Bradley Burgess  
Executive Vice President  
2251 Harvard St, Suite 134  
Sacramento, CA 95815  
916.595.2646  
bburgess@mgtconsulting.com



## EXPERIENCE / QUALIFICATIONS

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### FIRM EXPERIENCE AND QUALIFICATIONS

#### HISTORY AND ORGANIZATION STRUCTURE

MGT of America Consulting, LLC (MGT) began operations in 1974, and has judiciously expanded its consulting capabilities over the years. We currently have over 70 professionals throughout the country. MGT is owned by the current and retired partners, principals, and consultants of the firm. The advantage of this ownership structure to our clients is that every member of the firm has a vested interest in the successful completion of every project, for every client. Additionally, this ownership structure creates a mindset that permeates through every MGT owner: we are continuously building a growing, yet stable firm based on trusting long-term relationships, both within our own firm and with all our clients.

#### FIRM'S EXPERIENCE CONDUCTING USER FEE STUDIES

As a consulting group, we have delivered more of these analyses to more governmental jurisdictions than all current competition combined. Our experience with user fee studies stretches back to the late 1980s when our senior consulting staff worked for David M. Griffith & Associates (DMG).

MGT is thoroughly familiar with all relevant federal and state of California cost plan requirements, and the legal issues surrounding user fees. Our expert consulting team are proficient at managing user fee/cost plan projects exactly like the one being requested by the City. They have over 50 years of experience in governmental cost determination. This team has the capacity to start on your project at your earliest convenience. The following table illustrates recently completed MGT cost of service studies:

## EXPERIENCE / QUALIFICATIONS



Cities & Special Districts:		Counties:	
Anaheim		Alpine County	
Culver City		Butte County	
Encinitas		Calaveras County	
Fort Bragg		Humboldt County	
Fortuna		Inyo County	
Hayward		Lake County	
Healdsburg		Lassen County	
Huntington Beach		Los Angeles County Environmental Health	
Inglewood		Marin County	
La Habra		Modoc County	
La Mesa		Monterey County IT	
Lincoln		Orange County	
Newport Beach		Orange County Treasurer	
Oakland		Plumas County	
Palo Alto		Riverside County Real Estate ISF	
Rancho Cordova		Riverside County HR ISF	
Redlands		Riverside County IT ISF	
Rossmore CSD		San Joaquin County	
Sacramento		San Mateo County	
Sacramento Metro		San Mateo County Sheriff	
San Francisco MUNI		San Mateo County EMS	
Santa Ana		Stanislaus County	
Santa Clara		Sutter County	
Santa Rosa		Ventura County	
Torrance		Ventura County Sheriff	
Vallejo			
Whittier		Most of these clients received traditional cost allocation plans, but others requested that MGT perform custom cost allocation and user fee or cost of service projects.	
Woodland			
Yuba City			

## PROPOSED PROJECT STAFF

We understand that the best results come from spending an appropriate amount of time with your staff throughout the project and jointly adapting the project work plan to best meet the City's unique needs and objectives. We value on-site communication as much as you do. We exclusively offer a Six-Month check-up visit to assist with any outstanding implementation challenges.

**PROJECT MANAGEMENT AND COMMUNICATION:** Our project management process includes a project schedule with deadlines, and a project team with the availability to meet the deadlines. Additional consultants are available to add to the project if necessary, and quality assurance activities are performed throughout the project. Our communication plan includes frequent formal and informal correspondence, on-site meetings, and built in checks to ensure city satisfaction.

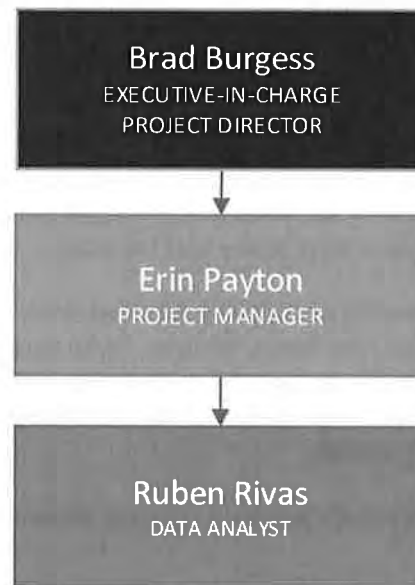
**PERSONNEL:** The team proposed for this engagement has many years of user fee calculation and consulting experience, as well as a proven track record of successful implementation. No comparable group of consultants in the nation who can perform the City's requested services as well as MGT's team. Our team will not just be your cost accountants—they will be your partners in a common effort to fairly and equitably calculate and distribute all levels of costs, and will do with minimum controversy, exposure and disruption.

### MR. J. BRADLEY BURGESS, EXECUTIVE-IN-CHARGE

Mr. J. Bradley Burgess is an Executive Vice President with MGT and is responsible for MGT Financial Services. He will serve as the Executive-in-Charge for this engagement. Mr. Burgess will be responsible for ensuring that this project is staffed properly. His objective will be that Calistoga is unconditionally satisfied with the services received from MGT consultants.

Mr. Burgess is an expert in project management, having managed or directed over 340 projects over his 27-year local government consulting career. He has taught hundreds of government finance officials indirect cost theory and application through numerous training sessions. He is a frequent presenter at conferences and workshops for clients, state and local governments, and state associations. Mr. Burgess has been a corporate officer at David M. Griffith & Associates, DMG-Maximus, Maximus, Public Resource Management Group and MGT of America Consulting, LLC.

### MGT Project Team



## PROPOSED PROJECT STAFF



### MS. ERIN PAYTON, PROJECT MANAGER

Ms. Payton will serve as the project manager and primary contact for this engagement. In this role Ms. Payton will attend on-site interviews, training and coordination over the life of this engagement. She will assist with department interviews, scheduling, data collection, follow up phone calls and e-mails. Ms. Payton will also closely monitor the project timeline against milestones and deadlines.

Ms. Payton is a Director with MGT and has 30 years of experience providing public-sector consulting services. She manages our West Coast cost plan and user fee practice. She has a background in local government consulting focusing on cost allocation development, user fee rate calculations, and jail rate studies.

She is the one of the most experienced cost analysts in the western United States, having completed more than 200 cost plan and user fee studies for local governments. Prior to joining MGT, she was a senior manager for management consulting firms PRM, Maximus, and DMG.

### MR. RUBEN RIVAS, USER FEE SPECIALIST AND DATA ANALYST

Mr. Ruben Rivas is a Consultant with MGT and will serve as the user fee study specialist for this engagement. Mr. Rivas brings exceptional organizational and interpersonal skills to this study and will be a significant asset to the user fee study.

Ms. Rivas has worked with Ms. Payton on several recent user fee and cost allocation studies, including Santa Clara, La Habra, Whittier, Santa Barbara County, Industry and Phoenix Development. He also has an extensive background in preparing indirect cost rates and overhead cost allocation models over the past seven years. He will be responsible for gathering, categorizing and analyzing user fee data for the City of Calistoga.

More detailed consultant resumes are provided in **APPENDIX A**.

## APPROACH AND METHODOLOGY

### SCOPE OF SERVICES - USER FEES STUDY

This section of the proposal identifies MGT's approach for preparing the City's user fee study. We will work with City staff from the Building Planning Department to build a solid foundation to design a fee schedule that reflect the way that the City wishes to manage its cost recovery program. The most important aspects of MGT fee studies are:

**SUPERIOR DESIGN:** Calistoga's fee-for-service offerings will drive which fees will be identified and studied. No other agency has your City's exact set of circumstances, history, political constraints, department personnel, and end users. MGT's project team will quickly identify all current and potential fee areas, determine the full cost recovery levels associated with each fee, determine how best to charge each fee to minimize complaints and maximize fair recoveries. We also want the fees to be easy to implement, and easy to understand by City staff and your citizens.

**TRANSPARENCY:** Our consultants have performed more user fee studies than anybody else in the nation. From the hundreds of user fee projects we have conducted, we understand that the best study is worthless if the stake holders believe the consultant plugged numbers into a black box and came up with an answer. Transparency is essential. That means every number in both the user fee study and the cost plan is easily traced back to its source. It also means that all stake holders understand how the project will be accomplished, and understand how MGT will arrive at its final results.

**EXPERIENCED PROJECT MANAGEMENT:** While there are many areas of flexibility and customization in our approach, the one area that we feel needs to be firmly structured and in place is the project management for this engagement. The basic concepts of this plan are as follows:

- ♦ **Establish a realistic timeline.** Working with the City, we will jointly agree on a final completion date and work backward to establish internal and external deadlines and milestones.
- ♦ **Understand and identify project choke points.** Before the project starts, we will explain where the most common choke points are in a project such as this. Understanding these dynamics at the start of the project will tend to mitigate any issues during the project. Any consultant that pretends that every project goes smoothly, without issues either has not been a part of these projects in the past, or is dishonest. It is better to honestly approach probable issues and eliminate them as early as possible.
- ♦ **Communication Plan.** Great projects are scoped out tightly and that scope is supported by regular communications. We suggest that decision makers as well as all staff providing data for this project be involved in our communication plan. The communications will be in person, via telephone, e-mail, conference call, and video conference. The communication plan will be in lock step with the project timeline, and all deliverables.

**EASE OF USE:** Studies that sit on the shelf because they are confusing or the results are not trusted by the client are worthless. A common trap that agencies fall into is needlessly complicating their fee

## APPROACH AND METHODOLOGY



schedule. The best fees are easily understood by all parties and are simple to collect. The costing complexity can be in the background, but what the customers see needs to be simple.

**LEGACY SERVICES:** A hallmark of the MGT approach is that we work with our clients to transition our user fee knowledge to them.

- ◆ **Policy and Strategy for Updates.** Once your new fee schedule is in place, the City should adopt a policy that allows it to be updated annually, or every couple of years. This policy needs to be well thought out and should provide the City with a virtually automatic way to allow fees to keep pace with inflation or other growth factors. This training will be extremely helpful to the City to maintain up-to-date fee schedules.

We will bring to this engagement our knowledge of cost recovery strategies, and we will review all services so that no fee potential area is left undocumented. We understand that the best analysis that is not adopted is valueless, and we will work with staff to develop an effective implementation plan. Bottom line, the City will not be engaging just fiscal analysts, but experienced consultants who will work with you to design, and implement, optimum solutions.

## BUILDING PERMIT USER FEES STUDY TASK DESCRIPTIONS

The following is a detailed work plan that identifies the tasks necessary to complete the study.

### TASK 1.0: CONDUCT INTRODUCTORY MEETINGS WITH RELEVANT PERSONNEL.

Meet with City personnel who have responsibility or a high interest in the user fee study. This meeting will refine the specific objectives, requirements, measurements, and schedule of the user fee study, and will establish the overall objectives of the study. We consider this meeting vital to successful project results including acceptance by department directors and officials as well as the City's elected officials.

### TASK 2.0: COMPARISON SURVEY

Not included in the current scope of services. May be added in as an optional service.

### TASK 3.0: COLLECT BASIC FINANCIAL DATA.

Collect and compile financial data such as expenditure statements, budgets, and salary reports. We will work with City personnel to develop and gather the needed data in the most efficient way possible. This data will provide the foundation for developing the total costs, direct and indirect, associated with each user fee service identified in Tasks 4 and 5.

### TASK 4.0: CATALOG ALL EXISTING USER FEE ACTIVITIES.

Create an inventory of all the building permit user fee services provided by the City.

### TASK 5.0: IDENTIFY POTENTIAL NEW USER FEE SERVICES.

Using our experience in other jurisdictions and our extensive data base of fees, we will create an inventory of potential new user fee services that are currently provided by the City, but have no corresponding current revenue.

## APPROACH AND METHODOLOGY



### TASK 6.0: ISSUE AN INVENTORY MEMORANDUM.

Based on the outcomes from Tasks 4 and 5, write and issue a memorandum documenting all building permit user fees within selected departments within the City. This inventory will establish the scope of the services to be included in the cost analysis.

### TASK 7.0: DEVELOP DATA GATHERING WORKBOOKS.

Using the financial and staffing information and user fee inventory collected in earlier tasks, MGT will develop data gathering workbooks to be used when interviewing city personnel. MGT will pre-populate our Excel-based user fee model with staffing and budget information, user fee services, and other support or non-fee related functions. These workbooks are extremely helpful in facilitating discussion about how user fee services are provided, and will also provide the City with a comprehensive view of resource allocation and utilization for each department included in the study.

### TASK 8.0: INTERVIEW STAFF PROVIDING USER FEE SERVICES.

Interview City personnel providing the user fee services identified in Tasks 4 and 5. In these interviews, we will determine the following information related to the user fee services provided:

- ♦ A unit of measurement for each user fee service provided.
- ♦ The number of units provided during the fiscal year.
- ♦ The personnel providing each user fee service.
- ♦ The amount of time spent to provide one unit of a user fee service.
- ♦ The amount of time spent per year providing all user fee services.

In an individually designed meeting format (individual interviews, group interviews, etc.) verify that 100 percent of all time for all department, division, section, or unit personnel is identified and accounted. This extra step, not completed by most cost consulting firms, ensures that all costs—user fee service related or not—are included in the study.

### TASK 9.0: PREPARE DRAFT USER FEE SCHEDULES.

Enter data into the firm's user fee calculation model, including data collected from the City's cost allocation plan (if the City proceeds with that service.) We will then calculate the full direct costs and indirect costs of each existing and potential new user fee service.

The user fee schedules created in this task are extremely detailed. Every cost component of the user fee service is identified and supported by detailed, yet clearly and concisely presented calculations.

### TASK 10.0: CONDUCT INTERNAL REVIEW OF THE DRAFT FEE SCHEDULES.

Undertake an internal review process to raise the accuracy of the user fee schedules. This review includes the following steps:

- ♦ A formal review by the Project Director of the study's assumptions and output.

## APPROACH AND METHODOLOGY



- ♦ Compare user fee calculations to prior studies, if available. Variances are identified, researched, understood, and explained to relevant individuals. The comparison and variance analysis between years, which is available to City personnel, raises the accuracy of project results.
- ♦ A final review of the user fee model by a project quality assurance consultant. This experienced consultant, although not directly involved in the project, has a fresher perspective of the project than does the lead and project consultants. This perspective incorporates knowledge from dozens of similar projects.

### TASK 11.0: PRESENT INITIAL CALCULATIONS TO DEPARTMENTS AND STAKEHOLDERS.

Review the initial user fee calculations with personnel from each department, division, section, or unit; make changes as required.

Although the user fee schedules are detailed, our consultants will spend as much time as requested with city personnel to fully explain the cost components of each user fee service. Our experience in conducting hundreds of these types of reviews helps facilitate this step.

### TASK 12.0: RECALCULATE AND REVIEW USER FEE SCHEDULES.

Recalculate data as required. Some departments require only one or two drafts and review. Other departments require several drafts and review. Calculations will not be considered final until department, division, section, or unit personnel fully understand the calculations and fully support the final results.

### TASK 13.0: DEVELOP RECOMMENDATIONS FOR FEE ADJUSTMENTS.

Not included in the current scope of services. Maybe added in as an optional service.

### TASK 14.0: PREPARE FINAL USER FEE SCHEDULES.

Prepare final user fee study summary schedules displaying costs and revenues of each existing and potential user fee service. The user fee summary schedules will include the following information:

- ♦ A comprehensive list of all user fees by department
- ♦ Annual volume statistics
- ♦ Current fees charged
- ♦ The full cost of providing each user fee activity
- ♦ The subsidy (or over-recovery) of each fee
- ♦ Recommended adjustments to each fee
- ♦ Potential revenue impacts, on a fee-by-fee basis as well as in total for each department

### TASK 15.0: PRESENT RESULTS TO CITY OFFICIALS.

Present, or assist in presenting, the final user fee study results to city officials. The presentation will include a Report of Findings, summarized information on a fee-by-fee basis and all detail reports.



## APPROACH AND METHODOLOGY



### TASK 16.0: PROVIDE COPIES OF DOCUMENTS AND MATERIALS.

Up to five copies (bound and unbound), and electronic of user fee reports will be provided to the City.

### TASK 17.0: PROVIDE MODEL AND TRAINING.

Provide the final copies of the customized Excel-based cost of service models for future use by the City as requested.

### TASK 18.0: PROVIDE CONTINUOUS GUIDANCE, AND ASSISTANCE.

A hallmark of our client-centered approach is our desire to provide guidance, and assistance to all appropriate city officials and personnel on reading, understanding and applying the results of the user fee study, and the associated schedules and calculations.

## IMPLEMENTATION SCHEDULE

We believe that a 90-100 day timeframe is realistic for this type of analysis. MGT will work with the City to develop clear internal deadlines at the beginning of the project, as well as intentional and structured communication throughout the engagement. Shown below are MGT's proposed timeline for this engagement by major task.

User Fee Study Building Permits	Month			
	1	2	3	4
1. Introductory Meetings				
2. Develop Comparison Survey				
3. Collect Core Data				
4. Catalog Existing Fees				
5. Identify Potential New Fees				
6. Issue Fee Inventory Memo				
7. Develop Data Workbooks				
8. Department Interviews				
9. Prepare Draft Fee Calculations				
10. Conduct Internal Review				
11. Present Draft Calculations				
12. Review/Revise Drafts				
13. Develop Recommendations				
14. Prepare Final Fee Calculations				
15. Present Results				
16. Provide Copies and Materials				
17. Provide Model/Training				
18. Provide Guidance and Assistance				

## COST

### USER FEE STUDY: BUILDING PERMITS

MGT proposes to perform the services included in this proposal related to the user fee study for a fixed fee of **\$16,960** which will provide **106** consulting hours. This fee includes all travel, copying and other expenses related to the fee study. The cost breakout for the user fee study by task is as follows:

Calistoga User Fee Study:		
Building	Hours	Cost
1. Introductory Meet/Project Memo	2	\$320
2. Collect Core Data	7	\$1,120
3. Catalog Existing Fees	4	\$640
4. Identify Potential New Fees	4	\$640
5. Issue Fee Inventory Memo	4	\$640
6. Develop Data Workbooks	8	\$1,280
7. Department Interviews	10	\$1,600
8. Prepare Draft Fee Schedules	16	\$2,560
9. Conduct Internal Review	3	\$480
10. Present Draft Calculations	6	\$960
11. Review/Revise Drafts	20	\$3,200
12. Prepare Final Schedules & Report	12	\$1,920
13. Present Results	3	\$480
14. Provide Copies and Materials	3	\$480
15. Provide Model / Training	4	\$640
<b>TOTAL</b>	<b>106</b>	<b>\$16,960</b>

**COST**  
♦ ♦ ♦

**HOURLY BILLING RATES**

MGT's hourly billing rates are as follows:

<b>MGT Professional Staff</b>	<b>Hourly Billing Rates</b>
Project Director	\$ 225
Project Manager	\$ 200
Project Consultant	\$ 175
Consultant	\$ 135

Additional services requested that fall outside the scope of this project shall be on a time-an-materials basis using the above hourly rates, with all expenses billed at cost subject to pre-approval.

## CONCLUDING STATEMENT

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Thank you for the opportunity to submit this proposal for cost plan and user fee services. The consulting team we have proposed for Calistoga's project is exceptional and unmatched. Erin Payton is the finest project manager in our firm and the most experienced user fee consultant in the nation. Ruben Rivas is a seasoned consultant involved with numerous user fee studies across California and Arizona. This team will be supported by a group of analysts in Sacramento. Our team will be able to run concurrent meetings with different departments which will cause minimal disruption to City staff. Most importantly, our consulting team will work together with the City's key players to find the perfect blend of cost recovery and demand elasticity to produce a practical fee schedule for Calistoga.

Finally, as the executive-in-charge of this project, Brad Burgess personally assures the City that this project will run smoothly and will achieve the City's desired results. Thank you and we hope to be of service to the City on this important project.

## APPENDIX A: RESUMES

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## APPENDIX A: RESUMES



### J. BRADLEY BURGESS

*Executive Vice President, Financial Services*  
MGT CONSULTING GROUP | bburgess@mgtconsulting.com

Mr. Burgess has performed a wide variety of cost-of-service studies for California local governments and state associations since 1990. Over the past 28 years, he has developed a broad expertise in local government consulting, with a primary focus on cost allocation methodologies, user fee analysis, state and local claims and grant applications, negotiations with state and federal authorities, and indirect cost rate proposal development. He has served as a corporate officer for the following consulting firms: MGT of America, Public Resource Management Group, LLC (founder), Maximus, DMG-Maximus, and David M. Griffith and Associates, Ltd.

Mr. Burgess has personally served over 190 cities, and 49 of the 58 counties within the state of California during his 24-year consulting career. He has also personally provided consulting services to 19 of California's 20 largest counties. Mr. Burgess also has extensive transit district experience, having worked with such districts as Los Angeles Metro Transit, SF Muni, BART, Oakland Port, San Diego Port, Charlotte Transit, and Sound Transit in Seattle.

Recent projects include cannabis research and costing projects for the City and County of Denver, the State of Maryland and several counties in California. He also prepared the budget for Gary Indiana School Corporation as part of the Emergency Management Team hired by the State of Indiana in 2017.

#### AREAS OF EXPERTISE

- ◆ California State Mandate Reimbursement (SB 90)
- ◆ Cannabis Policy, Decision-Making and Costing
- ◆ Local Government Cost Allocation Plans
- ◆ Indirect Cost Rate Proposals
- ◆ Cost of Service / User Fee Study
- ◆ Emergency Financial Management

#### PROFESSIONAL LEADERSHIP

Mr. Burgess is an Executive Vice President at MGT Consulting and serves on the firm's Board of Directors. He is also the Manager responsible for MGT's Financial Services Division, and is one of three vice presidents responsible for the division nationally. Mr. Burgess was one of three founding partners of Public Resource Management Group (PRM). PRM became the fastest growing local government costing services practice in the nation. During his tenure with DMG and Maximus, Mr. Burgess was one of two vice presidents responsible for the \$5 million local government consulting practice, with 30 professional consultants, and over 400 clients served per year. In addition to SB 90 claiming, additional representative consulting studies include appropriation limitation studies, indirect cost rate proposal preparation, full cost and 2 CFR Part 200 federal cost allocation plans, user fee studies, development impact fee analysis, and legislative analysis.

#### PERTINENT STATEWIDE EXPERIENCE

Mr. Burgess served as the Associate Director of the California Cities SB 90 Service and the CSAC SB 90 Service. In this capacity, Mr. Burgess worked on behalf of all California local agencies to reach resolution on statewide issues such as the Open Meetings Act impasse; developing unit costs for several current mandates; and has assisted agencies such as San Francisco, Santa Barbara County, Orange County, Santa Clara County, Sacramento County, Monterey County, Marin County and San Mateo County, as well as large municipalities such as Oakland and Sacramento to defend SB 90 claims under audit by the California State Controller. Mr. Burgess has also represented local agencies before the California Legislature, the Commission on State Mandates and the Bureau of State Audits. Mr. Burgess has also provided over 35 statewide training sessions on cost accounting theory, and presentations to over 20 state associations.

#### PROFESSIONAL HISTORY

## APPENDIX A: RESUMES

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### J. BRADLEY BURGESS

*Executive Vice President, Financial Services*  
MGT CONSULTING GROUP | bburgess@mgtconsulting.com

Mr. Burgess has a broad background in government, public policy, and journalism. For three years, he edited and published a monthly professional magazine for the University of Missouri. Mr. Burgess was the IDOT budget analyst for Governor Thompson in the State of Illinois, and a consultant for Continental Illinois National Bank in Chicago. Mr. Burgess was a journalist for a daily newspaper in Kansas City, had professional projects in Egypt, Israel and Saudi Arabia.

#### EDUCATION

**Masters of Public Policy Studies Degree**, University of Chicago, Harris School of Public Policy Studies

**Bachelor of Journalism Degree**, University of Missouri

#### WORK EXPERIENCE

**MGT of America Consulting, LLC**, *Executive Vice President – Financial Services, MGT Board of Directors*

**Public Resource Management Group LLC**, *Founding Partner*

**MAXIMUS, Inc.**, *Vice President*

**DMG-MAXIMUS, Inc.**, *Vice President*

**David M. Griffith & Associates, LTD.**, *Vice President, Director, Manager, Senior Consultant*

**State of Illinois Bureau of the Budget**, *Budget Analyst, Department of Transportation*

## APPENDIX A: RESUMES



### ERIN PAYTON

*Director*

MGT CONSULTING GROUP | [epayton@mgtconsulting.com](mailto:epayton@mgtconsulting.com)

Ms. Payton has been performing governmental cost of service studies since 1986. She has a background in local government consulting focusing on cost allocation development, user fee rate calculations, and jail rate studies. Ms. Payton is recognized as one of the country's leading experts on cost of service analysis. She has been instrumental in developing numerous cutting-edge analytical tools to define governmental costs and revenue enhancement opportunities. She has participated in local government consulting for more than 30 years in both direct cost analysis and project management. Ms. Payton has directly participated in and managed literally hundreds of cost of service studies for local agencies ranging in size from a population of just a few thousand up to several million.

#### EDUCATION

University of California, Santa Barbara

#### WORK EXPERIENCE

**MGT of America Consulting, LLC**, *Director*, 2007-Present

**Public Resource Management (PRM)**, *Senior Manager*, 2003-2007

**David M. Griffith & Associates (DMG)**, *Director*, 1986-2002

#### PROFESSIONAL EXPERIENCE

Ms. Payton has successfully delivered cost allocation plans, user fee studies, and jail rate studies for the following governmental entities:

##### **California Cities and Counties**

- |                       |                            |                            |                                  |
|-----------------------|----------------------------|----------------------------|----------------------------------|
| ◆ City of Alameda     | ◆ City of Hermosa Beach    | ◆ City of Morgan Hill      | ◆ City & County of San Francisco |
| ◆ City of Brentwood   | ◆ City of Huntington Beach | ◆ City of Napa             | ◆ City of South San Francisco    |
| ◆ City of Burbank     | ◆ City of Inglewood        | ◆ Napa County              | ◆ City of San Jose               |
| ◆ Butte County        | ◆ Inyo County              | ◆ City of Newport Beach    | ◆ San Mateo County               |
| ◆ City of Calexico    | ◆ City of La Habra         | ◆ City of Ontario          | ◆ Santa Barbara County           |
| ◆ City of Calistoga   | ◆ Lake County              | ◆ Orange County            | ◆ City of Santa Clara            |
| ◆ City of Camarillo   | ◆ City of La Mesa          | ◆ Orange Co ROV            | ◆ City of Santa Monica           |
| ◆ City of Campbell    | ◆ City of La Mirada        | ◆ Orange Co TTC            | ◆ City of Santa Rosa             |
| ◆ City of Chino Hills | ◆ City of Long Beach       | ◆ City of Pittsburg        | ◆ City of Suisun City            |
| ◆ City of Culver City | ◆ LA County Env'tal Health | ◆ Placer County            | ◆ City of Sunnyvale              |
| ◆ City of Cupertino   | ◆ City of Los Gatos        | ◆ Plumas County            | ◆ City of Temecula               |
| ◆ City of Daly City   | ◆ Madera County            | ◆ Port of San Diego        | ◆ City of Torrance               |
| ◆ Town of Danville    | ◆ City of Manhattan Beach  | ◆ City of Rancho Cucamonga | ◆ City of Watsonville            |
| ◆ City of El Centro   | ◆ Marin County             | ◆ City of Redlands         | ◆ City of Wheatland              |
| ◆ City of Emeryville  | ◆ City of Menlo Park       | ◆ City of Redondo Beach    | ◆ City of Whittier               |
| ◆ City of Encinitas   | ◆ City of Milpitas         | ◆ City of Richmond         | ◆ City of Woodland               |
| ◆ City of Fairfield   | ◆ City of Mission Viejo    | ◆ City of Roseville        |                                  |

##### **Other Cities and Counties**

- |                                 |                            |                           |                        |
|---------------------------------|----------------------------|---------------------------|------------------------|
| ◆ City of Bainbridge Island, WA | ◆ City of Ocean Shores, WA | ◆ City of Houston, TX     | ◆ Multnomah County, OR |
| ◆ Clatsop County, OR            | ◆ Portland (OR)            | ◆ Clackamas County, OR    | ◆ City of Portland, OR |
| ◆ City of Hillsboro, OR         | ◆ Development Commission   | ◆ Coconino County, AZ     | ◆ City of Salem, OR    |
| ◆ City of Des Moines, IA        | ◆ Tillamook County, OR     | ◆ City of Kennewick, WA   | ◆ Snohomish County, WA |
| ◆ Johnson County, KS            | ◆ City of Spokane, WA      | ◆ Fulton County, GA       | ◆ Spokane County, WA   |
| ◆ Lane County, OR               | ◆ City of Tacoma, WA       | ◆ City of Lake Oswego, OR | ◆ Thurston County, WA  |
| ◆ Morrow County, OR             | ◆ Umatilla County, OR      | ◆ City of Medford, OR     | ◆ City of Issaquah, WA |
|                                 |                            |                           | ◆ Pinal County, AZ     |



## APPENDIX A: RESUMES

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### RUBEN RIVAS

*Consultant*

MGT CONSULTING GROUP | rrivas@mgtconsulting.com

Mr. Rivas is a consultant with over five years of experience, working with both cities and counties throughout the region. He has professional experience in SB 90 reimbursement claiming projects and user fee studies. Mr. Rivas has helped over 20 cities file their annual state claims and has successfully claimed over two million dollars in state reimbursements. He has also collaborated with city staff to produce updated citywide fee schedules that are better suited to the agency's current situation.

#### AREAS OF EXPERTISE

- ♦ Reimbursable California State Mandated Programs (SB90)
- ♦ Indirect Cost Rate Proposals
- ♦ Time Studies
- ♦ Strategic Planning Projects
- ♦ User Fee Studies
- ♦ Comparison Analysis

#### SPANISH LANGUAGE SKILLS

Mr. Rivas has the ability to read, write, and speak Spanish fluently. This skill has helped on several projects, including the City of Stockton's library strategic plan project. Mr. Rivas spoke to residents and project stakeholder, translated questions, answers and notes for MGT staff and subcontractors.

#### EDUCATION

B.S., Business Management, California State University San Jose

#### LEADERSHIP EXPERIENCE

Latino Business Student Association  
Entrepreneurial Society & Financial Management Association

#### WORK EXPERIENCE

MGT of America Consulting, LLC, Consultant

JW Produce, Assistant Office Manager

JC-Appraisals, Office Assistant

#### REPRESENTATIVE CLIENTS

##### USER FEE STUDIES

- ♦ City of Anaheim
- ♦ City of Santa Monica
- ♦ City of Vallejo
- ♦ City of West Hollywood
- ♦ City of Pomona
- ♦ City of Agoura Hills
- ♦ City of Beaumont
- ♦ City of Burbank
- ♦ City of Vallejo
- ♦ City of Healdsburg
- ♦ City of Bend, OR
- ♦ City of San Francisco
- ♦ County of San Francisco

##### SB 90

- ♦ City of Baldwin Park
- ♦ City of Barstow
- ♦ City of Bell Gardens
- ♦ City of Gardena
- ♦ City of Hawthorne
- ♦ City of Modesto
- ♦ City of Salinas
- ♦ City of Seaside
- ♦ City of Monterey
- ♦ City of Porterville
- ♦ City of Visalia
- ♦ City of Whittier
- ♦ City of East Palo Alto

## APPENDIX A: RESUMES



### RUBEN RIVAS

*Consultant*

MGT CONSULTING GROUP | [rrivas@mgtconsulting.com](mailto:rrivas@mgtconsulting.com)

- ♦ Daly City
- ♦ Santa Barbara County
- ♦ Sacramento County Environmental Health
- ♦ Monterey County Environmental Health
- ♦ El Dorado County
- ♦ Stanislaus County Clerk/Recorder
- ♦ Stanislaus County Elections
- ♦ Los Angeles County Animal Services
- ♦ City of Rohnert Park
- ♦ Foster City
- ♦ City of Martinez
- ♦ City of Davis
- ♦ City of Meniffee
- ♦ City of La Habra
- ♦ City of Monterey Park
- ♦ City of San Clemente
- ♦ City of La Mirada

**FLORIDA**

516 North Adams Street  
Tallahassee, Florida 32301

4320 West Kennedy Boulevard  
Tampa, Florida 33609

**CALIFORNIA**

2251 Harvard Street, Suite 134  
Sacramento, California 95815

3579 East Foothill Boulevard, Suite 144  
Pasadena, California 91107

**COLORADO**

8200 South Quebec, Suite A3 #184  
Centennial, Colorado 80112

**KANSAS**

13303 West Maple, Suite 139 #177  
Wichita, Kansas 67235

**MARYLAND**

18310 Montgomery Village Avenue #520  
Gaithersburg, Maryland 20879

**MICHIGAN**

2343 Delta Road  
Bay City, Michigan 48706

**NORTH CAROLINA**

10030 Green Level Church Road, Suite #1267  
Cary, North Carolina 27519

**TEXAS**

1801 East 51<sup>st</sup> Street, Suite 365-504  
Austin, Texas 78723

**WASHINGTON**

1420 Marvin Road, NE, Suite C #342  
Olympia, Washington 98516



*MGT of America Consulting, LLC*

[www.mgtconsulting.com](http://www.mgtconsulting.com)



**AGREEMENT FOR SPECIAL SERVICES**

This Agreement is entered into between the City of Calistoga, A Municipal Corporation, hereinafter referred to as "Agency," and the law firm of LIEBERT CASSIDY WHITMORE, A Professional Corporation, hereinafter referred to as "Attorney."

WHEREAS Agency has the need to secure expert training and consulting services to assist Agency in its workforce management and employee relations; and

WHEREAS Agency has determined that no less than fourteen (14) public agencies in the Napa/Solano/Yolo area have the same need and have agreed to enter into identical agreements with Attorney; and

WHEREAS Attorney is specially experienced and qualified to perform the special services desired by the Agency and is willing to perform such services;

NOW, THEREFORE, Agency and Attorney agree as follows:

**Attorney's Services:**

During the year beginning July 1, 2018, Attorney will provide the following services to Agency (and the other aforesaid public agencies):

1. Four (4) days of group training workshops covering such employment relations subjects as management rights and obligations, negotiation strategies, employment discrimination and affirmative action, employment relations from the perspective of elected officials, performance evaluation (administering evaluations), grievance and discipline administration for supervisors and managers, planning for and responding to concerted job actions, current court, administrative and legislative developments in personnel administration and employment relations, etc., with the specific subjects covered and lengths of individual workshop presentations to be determined by Agency and the other said local agencies.

It is expressly understood that the material used during these presentations, including written handouts and projected power points are provided solely for the contracted workshops. This agreement warrants there will be no future use of Liebert Cassidy Whitmore material in other trainings or formats without the expressed written permission of Liebert Cassidy Whitmore. Any such use will constitute a violation of this agreement and copyright provisions.

2. Availability of Attorney for Agency to consult by telephone. Consortium calls cover questions that the attorney can answer quickly with little research. They do not include the review of documents, in depth research, written responses (like an opinion letter) or advice on on-going legal matters. The caller will be informed if the question exceeds the scope of consortium calls. Should the caller request, the attorney can assist on items that fall outside the service, but these matters will be billed at the attorney's hourly rate. (See additional services section.)
3. Providing of a monthly newsletter covering employment relations developments.

**Fee:**

Fees will be paid by the PARSAC. Said fee will cover Attorney's time in providing said training and consultative services and the development and printing of written materials provided to attendees at the training programs.

**Additional Services:**

Attorney shall, as and when requested by Agency, make itself available to Agency to provide representational, litigation, and other employment relations services. The Agency will be billed for the actual time such representation services are rendered, including reasonable travel time, plus any necessary costs and expenses authorized by the Agency.

The range of hourly rates for Attorney time is from Two Hundred Ten to Three Hundred Seventy Dollars (\$210.00 - \$370.00) per hour for attorney staff, One Hundred Ninety-Five Dollars to Two Hundred Thirty Dollars (\$195.00 - \$230.00) per hour for Labor Relations/HR Consultant and from Eighty to One Hundred Seventy Dollars (\$80.00 - \$170.00) per hour for services provided by paraprofessional and litigation support staff. Attorneys, paraprofessional and litigation support staff bill their time in minimum units of one-tenth of an hour. Attorney reviews its hourly rates on an annual basis and if appropriate, adjusts them effective July 1.

**Independent Contractor:**

It is understood and agreed that Attorney is and shall remain an independent contractor under this Agreement.

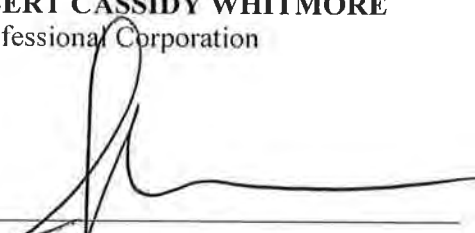
**Term:**

The term of this Agreement is twelve (12) months commencing July 1, 2018. The term may be extended for additional periods of time by the written consent of the parties.

**Condition Precedent:**

It is understood and agreed that the parties' aforesaid rights and obligations are contingent on no less than fourteen (14) local agency employers entering into a substantially identical Agreement with Attorney on or about July 1, 2018.

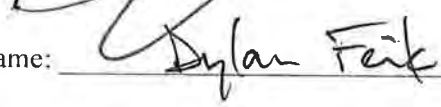
**LIEBERT CASSIDY WHITMORE**  
A Professional Corporation

By:   
J. Scott Fiedemann / Managing Partner

Date:  7/31/18

**CITY OF CALISTOGA**  
A Municipal Corporation

By: 

Name:  Dylan Feik

Title:  City Manager

Date:  7/31/18

# INVOICE

June 14, 2018

Gloria Leon  
Administrative Services Director  
City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515

(CA120-10000)

## NAPA/SOLANO/YOLO EMPLOYMENT RELATIONS CONSORTIUM

**Membership: 07/01/18 through 06/30/19**

*Please make your check out for one of the following amounts:*

<b>ERC Membership</b>	<b>PAID BY PARSAC</b>	<input checked="" type="checkbox"/>
<b>ERC Membership w/ Basic Liebert Library Subscription (optional)</b> <i>Basic Subscription provides access to over 200 sample forms, policies and checklists that can be used as templates.</i>	<b>\$405.00</b>	<input checked="" type="checkbox"/>
<b>ERC Membership w/ Premium Liebert Library Subscription (optional)</b> <i>Premium Subscription provides unlimited access to LCW workbooks in digital format, as well as over 200 sample forms, policies and checklists that can be used as templates.</i>	<b>\$895.50</b>	<input type="checkbox"/>

**Note:** Please send us a copy of this invoice along with your payment.

**For more information on the many benefits of Liebert Library, please visit  
[www.liebertlibrary.com](http://www.liebertlibrary.com), call Sherron Pearson at 310.981.2000 or email  
[info@lcwlegal.com](mailto:info@lcwlegal.com).**

**CITY OF CALISTOGA**  
**DESIGN PROFESSIONAL SERVICES AGREEMENT**  
**RE: GRANT APPLICATIONS**  
**PUMP STATION REPLACEMENT/RELOCATION PROJECT AND**  
**WATER RELIABILITY TRANSMISSION AND DISTRIBUTION PROJECTS**

THIS AGREEMENT is entered into as of the 3<sup>rd</sup> day of August 2018 by and between the CITY OF CALISTOGA ("City"), a California municipal corporation, and KENNEDY/JENKS CONSULTANTS, ("Design Professional").

Recitals

WHEREAS, City desires to obtain design services in connection with Hazard Mitigation Grant Program Applications for the Dunaweal/Pope Street Pump Stations Replacement/Relocation Project and water Reliability Transmission and Distribution Projects; and

WHEREAS, Design Professional hereby warrants to the City that Design Professional is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Design Professional pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Design Professional shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A."

2. Time of Performance. The services of Design Professional are to commence within 10 days of receiving the City's Notice to Proceed and be completed not later than September 4, 2018.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Design Professional, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A." However, in no event shall the amount City pays Design Professional exceed Sixty Seven Thousand Three Hundred Dollars (\$67,300). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Billing for said services shall be made once at the conclusion of the work and submittal of the records and any appropriate report. City shall review Design Professional's billing statement and pay Design Professional for services rendered



within 45 days of receipt of a complete billing statement that meets all requirements of this Agreement.

C. Changes in Compensation. Design Professional will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 3(A) without prior written amendment to this Agreement.

D. Taxes. Design Professional shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Design Professional.

E. No Overtime or Premium Pay. Design Professional shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Design Professional shall not receive a premium or enhanced pay for work performed on a recognized holiday. Design Professional shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Design Professional agrees to testify at City's request if litigation is brought against City in connection with Design Professional's report. Unless the action is brought by Design Professional or is based upon Design Professional's negligence, City will compensate Design Professional for the preparation and the testimony at Design Professional's standard hourly rates, if requested by City and not part of the litigation brought by City against Design Professional.

4. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Design Professional. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Failure of the Design Professional to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate City authorization.

5. Duties of City. City shall provide all information requested by Design Professional that is reasonably necessary to performing the Scope of Work. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement.

6. Ownership of Documents.

A. The plans, specifications, estimates, programs, reports, models, and other material prepared by or on behalf of Design Professional under this Agreement including all drafts and working documents, and including electronic and paper forms (collectively the "Documents"), shall be and remain the property of the City, whether the Services are completed or not. Design Professional shall deliver all Documents to City, upon request at (1) the

completion of the Services, (2) the date of termination of this Agreement for any reason, or (3) any time requested by City, upon ten (10) days prior written notice.

B. The Documents may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable without further employment of or payment of any compensation to Design Professional. Such use shall be at City's sole risk.

C. Design Professional retains the copyright in and to the intellectual property depicted in the Documents subject to Design Professional's limitations and City's rights and licenses set forth in this Agreement. City's ownership interest in the Documents includes the following single, exclusive license from Design Professional: Design Professional, for itself, its employees, heirs, successors and assigns, hereby grants (and if any subsequent grant is necessary, agrees to grant) to City an irrevocable, perpetual, royalty-free, fully paid, sole and exclusive license and right to use and exercise any and all of the copyrights or other intellectual property rights that Design Professional may author or create, alone or jointly with others, in or with respect to the Documents, including without limitation all analysis, reports, designs and graphic representations. City's license shall include the right to sublicense, shall be for all purposes with respect to each right of copyright, and shall be without restriction.

D. Design Professional shall include in all subcontracts and agreements with respect to the Services that Design Professional negotiates, language which is consistent with this Section 6.

E. All reports, information, data, and exhibits prepared or assembled by Design Professional in connection with the performance of its Services pursuant to this Agreement are confidential until released by the City to the public, and the Design Professional shall not make any of these documents or information available to any individual or organization not employed by the Design Professional or the City without the written consent of the City before any such release.

7. Employment of Other Design Professionals, Specialists or Experts.

A. Design Professional will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the City. Any consultants, specialists or experts approved by City are listed in Exhibit "B."

B. Design Professional represents that it has, or will secure at its own expense, all personnel required in performing the Services. All of the Services required hereunder will be performed by the Design Professional or under Design Professional's supervision, and all personnel engaged in the work shall be qualified to perform such services.

C. Design Professional shall make every reasonable effort to maintain stability and continuity of Design Professional's Key Personnel assigned to perform the Services. Key Personnel for this contract are listed in Exhibit "A".

D. Design Professional shall provide City with a minimum twenty (20) days prior written notice of any changes in Design Professional's Key Personnel, provided that Design Professional receives such notice, and shall not replace any Key Personnel with anyone to whom the City has a reasonable objection.

E. Design Professional plans to retain the subconsultants listed in Exhibit "B", who will provide services as indicated in Exhibit "A".

F. Design Professional will not utilize subconsultants other than those listed in Exhibit "B" without advance written notice to the City. Design Professional will not utilize a subconsultant to whom the City has a reasonable objection. Subconsultants providing professional services will provide professional liability insurance as required in Exhibit "C" unless the City waives this requirement, in writing.

8. Conflict of Interest.

A. Design Professional understands that its professional responsibility is solely to City. Design Professional warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Design Professional shall not knowingly, and shall take reasonable steps to ensure that it does not, employ a person having such an interest in the performance of this Agreement. If Design Professional discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Design Professional shall promptly disclose the relationship to the City and take such action as the City may direct to remedy the conflict.

B. Design Professional (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Design Professional's Services hereunder. Design Professional further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

C. Design Professional is not a designated employee within the meaning of the Political Reform Act because Design Professional:

(1) Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official other than normal contract monitoring; and

(2) Possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel (FPPC Reg. 18700(a)(2)).

9. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in

any decision relating to this Agreement which affects its personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

10. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Design Professional or otherwise in the event of any default or breach of the City, or for any amount which may become due to Design Professional or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

11. Indemnity.

A. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Design Professional shall defend (with legal counsel reasonably acceptable to the City) indemnify and hold harmless City and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Design Professional or its sub-Design Professionals), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional, any sub-Design Professional, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

B. Neither termination of this Agreement nor completion of the Services shall release Design Professional from its obligations under this Section 11, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

C. Design Professional agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Design Professional in the performance of this Agreement. If Design Professional fails to obtain such indemnity obligations from others as required, Design Professional shall be fully responsible for all obligations under this Section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Design Professional and shall survive the termination of this Agreement or this section.

D. Design Professional's compliance with the insurance requirements does not relieve Design Professional from the obligations described in this Section 11, which shall apply whether or not such insurance policies are applicable to a claim or damages.

12. Design Professional Not an Agent of City. Design Professional, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

13. Independent Contractor. It is understood that Design Professional, in the performance of the work and services agreed to be performed by Design Professional, shall act as and be an independent contractor as defined in Labor Code 3353 and not an agent or employee of City; and as an independent contractor, Design Professional shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Design Professional hereby expressly waives any claim it may have to any such rights.

14. Compliance with Laws,

A. General. Design Professional shall (and shall cause its agents and subcontractors), at its sole cost and expense, comply with all applicable federal, state and local laws, codes, ordinances and regulations now in force or which may hereafter be in force. Any corrections to Design Professional's reports or other Documents (as defined in Section 6) that become necessary as a result of Design Professional's failure to comply with these requirements shall be made at the Design Professional's expense.

B. Updates. Should Design Professional become aware that the requirements referenced in subparagraph A above change after the date of a report or other Document is prepared, Design Professional shall be responsible for notifying City of such change in requirements. Design Professional will bring the Documents into conformance with the newly issued requirements at the written direction of City. Design Professional's costs for providing services pursuant to this paragraph shall be submitted to City as Additional Services.

C. Licenses and Permits. Design Professional represents that it has the skills, expertise, licenses and permits necessary to perform the Services. Design Professional shall perform all such Services in the manner and according to the standards observed by a competent practitioner of the same profession in which Design Professional is engaged. All products of whatsoever nature which Design Professional delivers to City pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in Design Professional's profession. Permits and/or licenses shall be obtained and maintained by Design Professional without additional compensation throughout the term of this Agreement.

D. Documents Stamped. Design Professional shall have documents created as part of the Services to be performed under this Agreement stamped by registered professionals for the disciplines covered by Design Professional's Documents when required by prevailing law, usual and customary professional practice, or by any governmental agency having jurisdiction over matters related to the Services. Design Professional will stamp other documents as noted in the Scope of Work. The City will not be charged an additional fee to have such documents stamped.

E. Workers' Compensation. Design Professional certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the

provisions of that Code, and Design Professional certifies that it will comply with such provisions before commencing performance of this Agreement.

F. Prevailing Wage. Design Professional and Design Professional's sub-consultants, shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

G. Injury and Illness Prevention Program. Design Professional certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

H. City Not Responsible. The City is not responsible or liable for Design Professional's failure to comply with any and all of said requirements.

15. Nonexclusive Agreement. Design Professional understands that this is not an exclusive Agreement and that City shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Design Professional as the City desires.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Design Professional in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

17. Insurance. Design Professional shall provide insurance in accordance with the requirements of Exhibit "C".

18. Assignment Prohibited. Design Professional shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of City and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. Termination.

A. If Design Professional at any time refuses or neglects to prosecute its Services in a timely fashion or in accordance with the schedule, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its Services, or otherwise fails to perform fully any and all of the agreements herein contained, Design Professional shall be in default.

B. If Design Professional fails to cure the default within seven (7) days after written notice thereof, City may, at its sole option, take possession of any Documents or other materials (in paper and electronic form) prepared or used by Design Professional and (1) provide

any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Design Professional under this Agreement; and/or (2) terminate Design Professional's right to proceed with this Agreement.

C. In the event City elects to terminate, City shall have the right to immediate possession of all Documents and work in progress prepared by Design Professional, whether located at Design Professional's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Design Professional shall not be entitled to receive any further payment under this Agreement until the Services are completely finished.

D. In addition to the foregoing right to terminate for default, City reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Design Professional. In the event of termination without cause, Design Professional shall be entitled to payment in an amount not to exceed the Not-To-Exceed Amount which shall be calculated as follows: (1) Payment for Services then satisfactorily completed and accepted by City, plus (2) Payment for Additional Services satisfactorily completed and accepted by City, plus (3) Reimbursable Expenses actually incurred by Design Professional, as approved by City. The amount of any payment made to Design Professional prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2) and (3) above. Design Professional shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of such termination and payment. In addition, the City's right to withhold funds under Section 19.C. shall be applicable in the event of a termination for convenience.

E. If this Agreement is terminated by City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section 20 and Design Professional shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as he/she deems necessary due to unfavorable conditions or to the failure on the part of the Design Professional to perform any provision of this Agreement. Design Professional will be paid for satisfactory Services performed through the date of temporary suspension. In the event that Design Professional's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Design Professional's reasonable control, Design Professional's compensation shall be subject to renegotiation.

21. Entire Agreement and Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between City and Design Professional and supersedes any previous agreements, whether verbal or written, concerning the same subject matter. This Agreement may only be amended or extended from time to time by written agreement of the parties hereto.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City Manager  
City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515

If to Design Professional:

~~Don Barraza~~ Sachi Itagaki  
Kennedy/Jenks Consultants  
~~303 Second Street, Ste. 300 South~~  
San Francisco, CA 94107  
Santa Clara 95054

2350 Mission College Blvd.,  
Suite 525

PCT 8/3/18

26. Design Professional's Books and Records.

A. Design Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Design Professional.

B. Design Professional shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed



upon, the records shall be available at Design Professional's address indicated for receipt of notices in this Agreement.

D. City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in the City Manager's office. Access to such records and documents shall be granted to any party authorized by Design Professional, Design Professional's representatives, or Design Professional's successor-in-interest.

E. Pursuant to California Government Code Section 10527, the parties to this Agreement shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

27. Equal Employment Opportunity. Design Professional is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Design Professional will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Design Professional will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design Professional further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

28. Unauthorized Aliens. Design Professional hereby promises and agrees to comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Design Professional so employ such unauthorized aliens for performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Design Professional hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

29. Section Headings. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

30. City Not Obligated to Third Parties. City shall not be obligated or liable for payment hereunder to any party other than the Design Professional.

31. Remedies Not Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to

the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

32. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

33. No Waiver Of Default. No delay or omission of City to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to City shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of City.

34. Successors And Assigns. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

35. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work; Schedule, Compensation
- B. Exhibit B: Other Consultants, Specialists or Experts Employed by Design Professional
- C. Exhibit C: Insurance Requirements to Design Professional Services Agreement

36. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

37. News Releases/Interviews. All Design Professional and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

38. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Sonoma, California.

39. Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with.

Kennedy/Jenks Consultants Professional Services Agreement

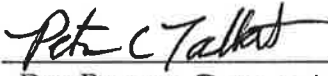
Furthermore, by entering into this Agreement, Design Professional hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Design Professional is obligated, which breach would have a material effect hereon.

IN WITNESS WHEREOF, the City and Design Professional have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By:   
Dylan Feik, City Manager

KENNEDY/JENKS CONSULTANTS

By:   
~~Don Barraza~~ Peter C. Talbot  
Title: ~~Principal~~ Operations Manager

ATTEST:

By:   
Kathy Flamson, City Clerk

## EXHIBIT A

Scope of Work, Schedule, Compensation

## ATTACHMENT "A"

### **Kennedy/Jenks Consultants** **Engineers & Scientists**

2350 Mission College Blvd., Suite 525  
Santa Clara, CA 95054  
650-852-2800

2 August 2018

Mr. Derek Rayner  
Senior Civil Engineer  
Public Works Department  
City of Calistoga  
414 Washington Street  
Calistoga, CA 94515

Subject: Proposal for Professional Services for  
Preparation of Hazard Mitigation Grant Program (HMGP) Applications  
For Calistoga Water Reliability Improvements and Pump Station  
Replacement/Consolidation Projects  
K/J B10681097

Dear Derek:

Kennedy/Jenks Consultants (Kennedy/Jenks) is pleased to submit this proposal for providing professional services for the preparation of applications to the HMGP administered through the State of California Office of Emergency Services (Cal OES) HMGP Unit, and funded by Federal Emergency Management Agency (FEMA). An understanding and background of the two projects 1) to mitigate the loss of water transmission and distribution at three locations and 2) Dunaweal pump station replacement/consolidation, scope of work, assumptions, summary of tasks to be performed by the City, consultant team, basis of compensation, schedule and terms and conditions are included below.

#### **Understanding and Background**

The City of Calistoga's water system requires improvements to the transmission and distribution lines as well as replacement/consolidation of the Dunaweal water pump stations to increase reliability especially for fire fighting but also during flood events. The transmission and distribution system requires three improvements: 1) the Conn Creek Aerial crossing at Silverado Trail and Conn Creek Rd; 2) the North Bay Aqueduct (NBA) Pipeline Corrosion Protection from Conn Creek to Foothill Boulevard in Calistoga; and 3) looping the water main from Greenwood to White Lane. The City's preliminary budget estimate for the pipeline improvements is \$6.7 million. The Dunaweal pump station needs to be replaced at a more hydraulically appropriate location while the Pope pump station needs to be relocated to a location outside of the 100-year

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floodplain. The City's preliminary budget estimate for the relocation/consolidation of the pump stations is \$6.7 million.

The City has applied to the Cal OES and the FEMA for funding for these water system pipeline and pump station improvements and has been invited to submit a full HMGP application for the two improvement projects.

### **Scope of Work**

Kennedy/Jenks has the capacity to provide a wide range of engineering and technical services that may be necessary to prepare the HMGP applications. Kennedy/Jenks has prepared the following detailed Scope of Work with tasks necessary to support Calistoga in the preparation of the HMGP applications. The main tasks in this scope of item are identified below.

Task 1: Grant Application Package for Water Reliability Improvements - Pipelines

Task 2: Grant Application Package for Pump Station Replacement/Consolidation

Task 3: Project Management, Meetings/Calls and Quality Control

Each grant application is comprised of 12 items summarized below. Items with an asterisk (\*) are those that Kennedy/Jenks will provide input to and/or develop. The other items will be developed by the City.

\*Application Item 1: Sub-Application

\*Application Item 2: Scope of Work

Application Item 3: Designs

\*Application Item 4: Studies

Application Item 5: Maps

Application Item 6: Photos

\*Application Item 7: Project Schedule

\*Application Item 8: Project Budget

Application Item 9: Match Commitment Letter

\*Application Item 10: Benefit Cost Analysis

Application Item 12: Environmental

Application Item 11: Maintenance Letter

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**Task 1: Grant Application Package for Water Reliability Improvements - Pipelines**

This task includes developing deliverables for the application items and/or reviewing items provided by the City as specified below. The 3 pipeline locations in this grant application package includes improvements at:

- 1) replacing the Conn Creek pipeline crossing at Silverado Trail and Conn Creek Rd which is currently underground, has been replaced one time, and acts as a fish barrier;
- 2) providing corrosion protection for the North Bay Aqueduct (NBA) Pipeline for 13.1 miles of 14-inch diameter ductile iron pipeline from Conn Creek to Foothill Boulevard in Calistoga; and
- 3) installing a pipeline line from Greenwood to White line to loop the system.

The City has developed conceptual information related to these 3 pipeline improvements that will be made available to Kennedy/Jenks.

**Application Item 1: Sub-Application** – Kennedy/Jenks scope includes:

-Review sub-application provided by City and work with City staff and develop alternatives for the project that meet OES/FEMA requirements. Prepare narratives that describes the alternatives and how the alternatives do or do not meet the need and the consequences of implementing the alternatives. Alternatives for each location are anticipated to be the following:

Conn Creek pipeline crossing- Alternative 1: No action; Alternative 2: Aerial pipeline to be attached to underside of Caltrans bridge that is undergoing preliminary design which includes planning for the pipeline; Alternative 2: Replace as underground pipeline.

NBA Corrosion Protection– Alternative 1: No action; Alternative 2: sacrificial anodes; Alternative 3: Imprest current;

Water main loop- Alternative 1: No action; Alternative 2: Above grade pipeline on bridge across river (based on recent Calistoga bike/pedestrian bridge project); Alternative 3: Pipeline under river;

**Application Item 2: Scope of Work** - Kennedy/Jenks scope includes:

-Prepare scope of work technical memorandum (TM) for the three pipeline improvements of about 20 pages modelled on the Emergency Generator TM prepared by the City, that provides the following content:

- Description of scope of work including preparation of narrative to describe: overview of Project; who will implement; what will be implemented; where project is located; when it will be implemented; why preferred project was selected for community; environmental, and economic reasons using alternatives described in Item 1; how alternative will solve the problem; budget summary and detail (to be developed in Item 8); and tabular schedule for implementation from Item 7.

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- Description of tasks including preparation of narrative to describe tasks and subtasks, if needed to provide: Design and Permitting, Construction, and Project Closeout
- Description of Land Acquisition, Right of Way or Easements, if needed.
- Description of Construction including overview; table with summary of dimensions of facilities and material types; project phasing, if any; location of staging area and parking areas; and anticipated construction equipment.
- Summary of project benefits

**Application Item 3: Designs** –Kennedy/Jenks' scope includes preparation of up to 4 sheets on Autocad title block for 11x17 plot that show schematically, the three project design concepts. The fourth sheet will include the distribution pipe network, to be provided by Calistoga, and the location of the three improvement locations.

**Application Item 4: Studies** – Kennedy/Jenks' scope includes preparation of a brief memo (about 6 pages total text) that describes technical information/preliminary hydraulic analysis provided by Calistoga regarding the three improvement locations. Photos that can support the text will be provided by Calistoga.

**Application Item 7: Project Schedule** - Kennedy/Jenks' scope includes preparing a 1-page tabular schedule that shows the various scope of work items in Item 2.

**Application Item 8: Project Budget** – Kennedy/Jenks' scope includes preparation of an engineer's estimate of probable construction costs to implement each of the preferred alternatives for the three pipeline improvements, including planning, design and construction in alignment with Item 2 Scope of Work. This includes a fee estimate for design and planning level cost estimate for construction. The estimate of probable construction cost is an order of magnitude estimate with an accuracy range of +50%to -30%.

**Application Item 10: Benefit Cost Analysis** – Kennedy/Jenks' scope is to review/refine the benefits narrative document provided by Calistoga.

Each item for the application will be provided to Calistoga in electronic form for insertion into the main grant application package. Preparation of hard copies are provided in Task 4- Optional services.



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**Task 2: Grant Application Package for Pump Station Replacement/Consolidation**

This task includes developing deliverables for the application items and/or reviewing items provided by the City as specified below for replacement/relocation of the Dunaweal water pump station (PS) which likely includes consolidation with the Pope Street water PS which is located in the 100-year flood plain.

The City has developed conceptual information related to these pump station improvements that will be made available.

**Application Item 1: Sub-Application** – Kennedy/Jenks scope includes:

-Review sub-application provided by City and work with City staff and develop alternatives for the project that meets OES/FEMA requirements. Prepare narrative that describes the alternative and how the alternative does or does not meet the need and the consequences of implementing the alternative. Proposed alternatives for the pump station replacement/consolidation are anticipated to be the following:

Alternative 1: No Action;

Alternative 2 – Consolidate 2 pump stations in single location;

Alternative 3 – Replace both pump stations in 2 separate locations.

**Application Item 2: Scope of Work** - Kennedy/Jenks scope includes:

-Prepare scope of work technical memorandum (TM) for the pump station replacement/consolidation of about 20 pages modelled on the Emergency Generator TM prepared by the City, that provides the following content:

- Description of scope of work including preparation of narrative to describe: overview of Project; who will implement; what will be implemented; where project is located; when it will be implemented; why preferred project was selected for community, environmental, and economic reasons using alternatives described in Item 1; how alternative will solve the problem; budget summary and detail (to be developed in Item 8); and tabular schedule for implementation from Item 7.
- Description of tasks including preparation of narrative to describe tasks and subtasks, if needed to provide: Design and Permitting, Construction, and Project Closeout
- Description of Land Acquisition, Right of Way or Easements, if needed.
- Description of Construction including overview; table with summary of dimensions of facilities and material types; project phasing, if any; location of staging area and parking areas; and anticipated construction equipment.
- Summary of project benefits

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**Application Item 3: Designs** –Kennedy/Jenks' scope includes preparation of up to 3 sheets on Autocad title block for 11x17 plot that shows, schematically, the pump station design concepts including a concept-level pump station footprint of about 20'x20' that includes 3 pumps with an estimated horsepower;

**Application Item 4: Studies** – Kennedy/Jenks' scope includes preparation of a brief memo (about 5 pages total text) that describes technical information/preliminary hydraulic analysis provided by Calistoga regarding the pump station concept. Photos that can support the text will be provided by Calistoga.

**Application Item 7: Project Schedule** - Kennedy/Jenks' scope includes preparing a 1-page tabular schedule that shows the various scope of work items in Item 2.

**Application Item 8: Project Budget** – Kennedy/Jenks' scope includes preparation of an engineer's estimate of probable construction costs to implement the preferred alternative for the pump station improvements, including planning, design and construction in alignment with Item 2 Scope of Work. This includes a fee estimate for design and planning level cost estimate for construction. The estimate of probable construction cost is an order of magnitude estimate with an accuracy range of +50%to 30%.

**Application Item 10: Benefit Cost Analysis** – Kennedy/Jenks' scope is to review/refine benefits narrative document provided by Calistoga.

Each item for the application will be provided to Calistoga in electronic form for insertion into the main grant application package. Preparation of hard copies are provided in Task 4- Optional services.

### **Task 3: Project Management, Meetings/Calls and Quality Control**

Kennedy/Jenks will supervise and coordinate HMGP grant application activities, including subconsultants, submit invoices and track project schedule and costs. This task includes coordinating with City staff and setting up and attending up to three (3) conference call/webcasts. This task includes providing quality control and deliverable review.

### **Task 4: Optional Services**

This task includes a budget of \$7,500 for optional services that could include, preparation of hard copies and CD and delivery to OES/FEMA, integration of materials into a single grant application document, response to OES/FEMA follow-up questions, after submittal and other out of scope items

### **Key Assumptions**

We understand that the City of Calistoga staff will provide the following:

- a. Technical work already complete for the projects including electronic versions of record drawings for the project sites, calculations and drawings, preliminary budget estimates,

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2 August 2018  
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conceptual site plans and other information that will facilitate quickly developing the information for the grant application.

- b. Prepare and provide results of FEMA Benefit Cost Analysis (BCA) including draft BCA narrative.
- c. Available figures to support conceptual site plan, and other figures/maps.

Project management will be provided for a period of two months, the assumed duration of this project including follow-up questions by OES/FEMA.

### **Basis of Compensation**

We propose that compensation for our services be on a time and expense reimbursement basis in accordance with our January 1, 2018 Custom Schedule of Charges, enclosed. Payments shall be made monthly based on invoices, which describe services and list actual costs and expenses. Based on our estimate of services for our proposed tasks, we propose a fee budget of \$67,300 for preparation of the documents to support the two HMGP applications. The proposed budget by task is detailed in the attached Proposal Fee Estimate. The budget may be increased if necessary to provide additional services requested and authorized by the City.

### **Schedule**

It is understood that the City will need to submit the HMGP grant applications before 4 September 2018 in order to retain eligibility for the program. Kennedy/Jenks proposes to complete the scope of work described above by the 4 September 2018 deadline contingent on receipt of authorization from the City by 4 August 2018 and receipt of the materials to be provided by the City by 6 August 2018.

### **Terms and Conditions**

This proposal is based on current projections of staff availability and costs and, therefore, is valid for 90 days following the date of this letter. To assure a clear understanding of all matters related to our mutual responsibilities, the attached Standard Conditions dated January 1, 2007 are made a part of our agreement. We have found these terms to be appropriate for use with agreements for the provision of engineering and scientific services, and accordingly, should any conflict exist between the attached terms and the form of any purchase order or confirmation issued, the terms of this proposal and the attached Standard Conditions shall prevail in the absence of our express written agreement. If this proposal meets with your approval, please sign where noted at the end of the document and return a copy to our office to serve as our authorization.

D. Rayner  
2 August 2018  
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If you have any questions regarding our proposal, please contact Sachi Itagaki at (650) 852-2817.

Very truly yours,

KENNEDY/JENKS CONSULTANTS, INC.

**AUTHORIZATION:**

CITY OF CALISTOGA



Peter C. Talbot, P.E.  
Operations Manager



Sachiko Itagaki, P.E.  
Principal  
One Water Community of Practice

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Enclosure (3): Schedule of Charges dated January 1, 2018  
Standard Conditions dated January 1, 2007  
Proposal Fee Estimate

Cc: \_\_\_\_\_  
file

**Client/Address:** City of Calistoga  
414 Washington St  
Calistoga, CA 94515

**Contract/Proposal Date:** August 2, 2018

## **Custom Schedule of Charges**

**Date:** January 1, 2018

### **PERSONNEL COMPENSATION**

<b>Classification</b>	<b>Hourly Rate</b>
Engineer-Scientist-Specialist 1 .....	\$130
Engineer-Scientist-Specialist 2 .....	\$150
Engineer-Scientist-Specialist 3 .....	\$165
Engineer-Scientist-Specialist 4 .....	\$180
Engineer-Scientist-Specialist 5 .....	\$185
Engineer-Scientist-Specialist 6 .....	\$215
Engineer-Scientist-Specialist 7 .....	\$240
Engineer-Scientist-Specialist 8 .....	\$260
Engineer-Scientist-Specialist 9 .....	\$280
CAD-Technician .....	\$110
Senior CAD-Technician .....	\$125
CAD-Designer .....	\$145
Senior CAD-Designer .....	\$160
Project Administrator .....	\$125
Administrative Assistant .....	\$100
Aide .....	\$80

### **Direct Expenses**

Reimbursement for direct expenses, as listed below, incurred in connection with the work, will be at cost plus ten percent for items such as:

- a. Maps, photographs, 3rd party reproductions, 3rd party printing, equipment rental, and special supplies related to the work.
- b. Consultants, soils engineers, surveyors, contractors, and other outside services.
- c. Rented vehicles, local public transportation and taxis, travel and subsistence.
- d. Project specific telecommunications and delivery charges.
- e. Special fees, insurance, permits, and licenses applicable to the work.
- f. Outside computer processing, computation, and proprietary programs purchased for the work.

Reimbursement for vehicles used in connection with the work will be at the federally approved mileage rates or at a negotiated monthly rate.

If prevailing wage rates apply, the above billing rates will be adjusted as appropriate.

Overtime for non-exempt employees will be billed at one and a half times the Hourly Rates specified above.

Rates for professional staff for legal proceedings or as expert witnesses will be at rates one and one-half times the Hourly Rates specified above.

Excise and gross receipts taxes, if any, will be added as a direct expense.

The foregoing Schedule of Charges is incorporated into the agreement for the services provided, effective April 25, 2018 through December 31, 2018. After December 31, 2018, invoices will reflect the Schedule of Charges currently in effect.

**Client:** City of Calistoga

**Contract/Proposal Date:** 2 August 2018

**Standard Conditions**

**January 1, 2017**

CLIENT and KENNEDY/JENKS CONSULTANTS, INC. ("CONSULTANT") agree that the following provisions shall be a part of their agreement.

1. **TERMS OF PAYMENT.** CLIENT will be invoiced at the end of the first billing period following commencement of work and at the end of each billing period thereafter. Payment in full of an invoice must be received by CONSULTANT within thirty (30) days of the date of such invoice.
2. **EFFECT OF INVOICE.** The work performed shall be deemed approved and accepted by CLIENT as and when invoiced unless CLIENT objects within fifteen (15) days of invoice date by written notice specifically stating the details in which CLIENT believes such work is incomplete or defective, and the invoice amount(s) in dispute. CLIENT shall pay undisputed amounts as provided for in the preceding paragraph.
3. **INTEREST; SUSPENSION OF WORK.** Failure of CLIENT to make full payment of an invoice so that it is received by CONSULTANT within said thirty (30) days of the date thereof subjects the amount overdue to a delinquent account charge of one percent (1%) of the invoice amount per month, compounded monthly, but not to exceed the maximum rate permitted by law. Failure of CLIENT to submit full payment of an invoice within thirty (30) days of the date thereof subjects this agreement and the work herein contemplated to suspension or termination at CONSULTANT's discretion.
4. **ADVANCE PAYMENT; WITHHOLDING OF WORK PRODUCT.** CONSULTANT reserves the right to require payment in advance for work it estimates will be done during a given billing period. CONSULTANT, without any liability to CLIENT, reserves the right to withhold any services and work products herein contemplated pending payment of CLIENT's outstanding indebtedness or advance payment as required by CONSULTANT. Where work is performed on a reimbursable basis, budget may be increased by amendment to complete the scope of work. CONSULTANT is not obligated to provide services in excess of the authorized budget.
5. **STANDARD OF CARE.** CONSULTANT's services performed under this agreement will be performed in a manner consistent with the care and skill ordinarily exercised by members of the profession practicing under similar conditions at the same time and in the same or similar locality. When the findings and recommendations of CONSULTANT are based on information supplied by CLIENT and others, such findings and recommendations are correct to the best of CONSULTANT's knowledge and belief. No warranty, express or implied, is made or intended by this agreement, or by the foregoing statement of the applicable standard of care, or by providing consulting services or by furnishing oral or written reports of findings made. No entity other than CLIENT or CONSULTANT shall be construed as a beneficiary to this Agreement.
6. **INSURANCE COVERAGE.** CONSULTANT is protected by Worker's Compensation insurance as required by applicable state laws and will maintain employer's liability coverage. During the performance of this agreement CONSULTANT will maintain professional liability insurance with a limit of \$1 million on a claims made, annual aggregate basis, and commercial general liability and automobile liability insurance each with a limit of not less than \$1 million on an occurrence basis.
7. **ALLOCATION OF RISK.** CLIENT and CONSULTANT have discussed the risks associated with this project and the extent to which those risks should be shared by CLIENT and by CONSULTANT, and have agreed:  
(a) To the fullest extent permitted by law, CLIENT agrees to limit the liability of CONSULTANT, its officers, employees, and subconsultants to CLIENT, all landowners, contractors, subcontractors, lenders, suppliers, manufacturers, third parties, and their employees such that the total aggregate liability, including all attorneys fees and costs shall not exceed \$50,000.00 or the total fees paid for CONSULTANT's services on this project, whichever is greater. (b) All damages such as loss of use, profits, anticipated profits, and the like losses are consequential damages for which CONSULTANT is not liable. (c) CLIENT shall give written notice to CONSULTANT of any claim of negligent act, error or omission within one (1) year after the completion of the work performed by CONSULTANT. Failure to give notice herein required shall constitute a waiver of said claim by CLIENT.
8. **SERVICES DURING CONSTRUCTION.** Any construction inspection or testing provided by CONSULTANT is for the purpose of determining compliance by contractors with the functional provisions of project documents only. CLIENT agrees that CONSULTANT will have no inspection responsibilities at the jobsite except to the extent specifically provided for in the agreed upon scope of work. CONSULTANT shall not be held in any way to guarantee any contractor's work, nor to assume responsibility for means, methods or appliances used by any contractor nor to assume responsibility for a contractor's compliance with laws and regulations or for contractor's errors, omissions, or defective work. CLIENT agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for jobsite conditions during the course of construction of the project, including safety of all persons and property and that this responsibility shall be continuous and not be limited to normal working hours. CLIENT agrees to require in all construction contracts for the project, provisions that CLIENT and CONSULTANT shall be defended and indemnified by the contractor and its subcontractors and named additional insureds on contractor's and subcontractor's insurance. Any statements of estimated construction costs furnished by CONSULTANT are based on professional opinions and judgment, and CONSULTANT will not be responsible for fluctuations in construction costs.
9. **SERVICES BY CLIENT.** CLIENT will provide access to site of work, obtain all permits, provide all legal services in connection with the project, and provide environmental impact reports and energy assessments unless specifically included in the scope of work. CLIENT shall pay the costs of checking and inspection fees, zoning application fees, soils engineering fees, testing fees, surveying fees, and all other fees, permits, bond premiums, and all other charges not specifically covered by the scope of work. CLIENT shall designate to CONSULTANT the location of all subsurface utility lines and other subsurface man-made objects (in this agreement collectively called "buried utilities") within the boundaries of the jobsite. CONSULTANT will conduct at CLIENT's expense such additional research as in CONSULTANT's professional opinion is appropriate to attempt to verify the location of buried utilities at the jobsite, but CLIENT shall remain responsible for the accurate designation of their location and, shall indemnify, defend, and hold CONSULTANT harmless from any claims or loss arising from the failure to accurately locate buried utilities.
10. **COMPLIANCE WITH LAWS.** CLIENT and CONSULTANT shall each use reasonable care in its efforts to comply with laws, codes, ordinances and regulations in force at the time of the performance by each under this agreement, insofar as such laws are applicable to a party's performance. Unless otherwise provided for in the scope of work of this agreement or by law, the responsibility for making any disclosures or reports to any third party, for notifying all governmental authorities of the discovery of hazardous materials on the jobsite, and for taking corrective, remedial, or mitigative action shall be solely that of CLIENT. It is CONSULTANT's belief that the work is not subject to California Prevailing Wage Law, unless expressly identified as such within the scope of work. Should it be alleged or determined that some or all of the work is subject to California's Prevailing Wage Law, then CLIENT shall reimburse CONSULTANT for the additional costs associated with CONSULTANT complying with those laws.
11. **USE OF DOCUMENTS.** Drawings, reports, writings and other original documents (documents) furnished by CONSULTANT are for the exclusive use of CLIENT and CONSULTANT retains all intellectual property rights including copyrights. Documents are furnished to CLIENT upon CLIENT's specific agreement that it assumes all liability



## Standard Conditions (Page 2)

January 1, 2017

resulting from the further distribution of such documents, or any portion of them, and that CLIENT will indemnify CONSULTANT and hold it harmless against any claims associated with the unauthorized use of such documents. In no event will CLIENT or any person acting on its behalf edit, abridge, or modify any document prepared by CONSULTANT without CONSULTANT's express written consent.

12. **ELECTRONIC OR MAGNETIC DATA.** Documents provided by CONSULTANT in electronic or magnetic formats are provided under the following conditions unless detailed otherwise in the scope of work or by a written amendment. Documents are provided in CONSULTANT's standard software formats. CLIENT recognizes that electronic or magnetic data and its transmission can be easily damaged, may not be compatible with CLIENT'S software formats and systems, may develop inaccuracies during conversion or use, and may contain viruses or other destructive programs, and that software and hardware operating systems may become obsolete. As a condition of delivery of electronic or magnetic data, CLIENT agrees to defend indemnify and hold CONSULTANT, its subconsultants, agents and employees harmless from and against all claims, loss, damages, expense and liability arising from or connected with its use, reuse, misuse, modification or misinterpretation. In no event shall CONSULTANT be liable for any loss of use, profit or any other damage.
13. **TERMINATION.** This agreement may be terminated by either party by written notice should the other party fail substantially to perform its obligations under this agreement and continue such default after the expiration of a seven (7) day notice period. Either party may terminate this agreement without necessity of cause upon the expiration of a thirty (30) day notice period. If this agreement is terminated by CLIENT in the absence of default by CONSULTANT, CONSULTANT shall be paid for services performed and costs incurred by it prior to its receipt of notice of termination from CLIENT, including reimbursement for direct expenses due, plus an additional amount, not to exceed ten percent (10%) of charges incurred to the termination notice date, to cover services to orderly close the work and prepare project files and documentation, plus any additional direct expenses incurred by CONSULTANT including but not limited to cancellation fees or charges. CONSULTANT will use reasonable efforts to minimize such additional charges.
14. **PRECEDENCE OF CONDITIONS.** Should any conflict exist between the terms herein and the terms of any purchase order or confirmation issued by CLIENT, the terms of these Standard Conditions shall prevail in the absence of CONSULTANT's express written agreement to the contrary.
15. **ASSIGNMENT: SUBCONTRACTING.** Neither CLIENT nor CONSULTANT shall assign any of its rights including a right to sue, or delegate its duties under this agreement without the written consent of the other.
16. **FORCE MAJEURE.** Any delay or default in the performance of any obligation of CONSULTANT under this agreement resulting from any cause(s) beyond CONSULTANT's reasonable control shall not be deemed a breach of this agreement. The occurrence of any such event shall suspend the obligations of CONSULTANT as long as performance is delayed or prevented thereby, and the fees due hereunder shall be equitably adjusted.
17. **MERGER: WAIVER: SURVIVAL.** This agreement constitutes the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations and/or agreements, written or oral. One or more waiver of any term, condition or other provision of this agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other provision. Any provision hereof which is legally deemed void or unenforceable shall not void this entire agreement and all other provisions shall survive and be enforceable.
18. **APPLICABLE LAW.** This agreement shall be interpreted and enforced according to the laws of the State of California. In the case of invalidity or unenforceability of any provision or portion thereof, the provision shall be rewritten and enforced to the maximum extent permitted by law to accomplish as near as possible the intent of the original provision. Nothing herein shall be construed to provide for indemnification against damages arising from a party's gross negligence or willful misconduct.

Proposal Fee Estimate

Kennedy/Jenks Consultants

CLIENT Name: City of Calistoga  
 PROJECT Description: CES/HMGP Grant Application for Water Distribution Pipeline and Pump Station Improvements  
 Proposal/Job Number: 810681097 Date: 8/2/2018

January 1, 2018 Custom Rates	Eng 12	Eng 10	Eng 8	Eng 6	Eng 4	Sr. CAD-Tech	Project Administrator	Total	KJ Labor	Total Labor + Subs + Expenses
Hourly Rate:	\$260	\$240	\$180	\$165	\$125	\$125		Hours	Fees	Fees
<b>Task 1: Grant Application Package for Water Reliability Improvements - Pipelines</b>										
Item 1: Sub Application		3		4	6			13	\$2,430	\$2,430
Item 2: Scope of Work - 20 page TM	2	8	16	24				54	\$9,780	\$9,780
Item 3: Designs (4 conceptual sheets)	2	4		12	8			26	\$4,460	\$4,460
Item 4: Studies - 6 page TM		6	8	6				20	\$4,120	\$4,120
Item 7: Project Schedule		3		4				7	\$1,380	\$1,380
Item 8: Project Budget	2	6	8	4				20	\$4,080	\$4,080
Item 10: Benefit Cost analysis		4	4					8	\$1,680	\$1,680
<b>Task 1 - Subtotal</b>	<b>6</b>	<b>34</b>	<b>40</b>	<b>56</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>150</b>	<b>\$27,610</b>	<b>\$27,610</b>
<b>Task 2: Grant Application Package for Replacement/Consolidation of Pump Station</b>										
Item 1: Sub Application		4	4	6				14	\$2,670	\$2,670
Item 2: Scope of Work - 20 page TM	2	8	16	22				52	\$9,480	\$9,480
Item 3: Designs (3 conceptual sheets)	2	6		8	6			21	\$3,780	\$3,780
Item 4: Studies - 5 page TM		4	6	4				16	\$2,950	\$2,950
Item 7: Project Schedule		2		4				6	\$1,140	\$1,140
Item 8: Project Budget	2	4	6	4				16	\$3,220	\$3,220
Item 10: Benefit Cost analysis		4	4					8	\$1,680	\$1,680
<b>Task 2 - Subtotal</b>	<b>6</b>	<b>31</b>	<b>36</b>	<b>48</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>127</b>	<b>\$24,800</b>	<b>\$24,800</b>
<b>Task 3: Project Management, Meetings/Calls, Quality Control</b>										
Project Management		8						10	\$2,400	\$2,400
QA/QC		8						8	\$2,080	\$2,080
Conf Call/Webcasts (3)		3	3		6			12	\$2,400	\$2,400
<b>Task 3 - Subtotal</b>	<b>11</b>	<b>11</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>30</b>	<b>\$6,880</b>	<b>\$6,880</b>
<b>Task 4 - Optional Services</b>										
As-required	3	12	8	10	4			37	\$7,500	\$7,500
<b>Task 4 - Subtotal</b>	<b>3</b>	<b>12</b>	<b>8</b>	<b>10</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>37</b>	<b>\$7,500</b>	<b>\$7,500</b>
<b>All Tasks Total</b>	<b>26</b>	<b>88</b>	<b>84</b>	<b>120</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>354</b>	<b>\$87,390</b>	<b>\$87,390</b>



EXHIBIT B

Other Consultants, Specialists or Experts Employed by Design Professional

NONE

EXHIBIT C

Insurance Requirements to Agreement for Professional Services  
Re: HMGP Grant Applications  
Dunawael/Pope Pump Stations Replacement/Relocation Project  
Water Reliability Transmission and Distribution Projects

Design Professional shall, at all times it is performing services under this Agreement, provide and maintain insurance in the following types and with limits in conformance with the requirements set forth below. Design Professional will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Design Professional agrees to amend, supplement or endorse the existing coverage to do so. Design Professional acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Design Professional in excess of the limits and coverage required in this agreement and that is applicable to a given loss will be available to City.

1. Commercial General Liability Insurance, occurrence form, using Insurance Services Office ("ISO") "Commercial General Liability" policy form CG 00 01 or an approved equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review, but in no event shall be less than \$2,000,000 each occurrence;
2. Business Auto Coverage on ISO Business Automobile Coverage form CA 00 01 including symbol 1 (Any Auto) or an approved equivalent. Limits are subject to review, but in no event shall be less than \$1,000,000 each occurrence. If Design Professional or its employees will use personal autos in any way in connection with performance of the Services, Design Professional shall provide evidence of personal auto liability coverage for each such person.
3. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employers liability insurance, with minimum limits of \$1 million per occurrence.
4. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by insured first. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Design Professional, subconsultants or others involved in performance of the Services. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,000,000 per occurrence.

5. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Design Professional and "Covered Professional Services" as designated in the policy must include the type of work performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate.

6. Insurance procured pursuant to these requirements shall be written by insurers that are authorized to transact the relevant type of insurance business in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

7. General conditions pertaining to provision of insurance coverage by Design Professional. Design Professional and City agree to the following with respect to insurance provided by Design Professional:

A. Design Professional agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992, or an equivalent. Design Professional also agrees to require all contractors, and subcontractors to do likewise

B. No liability insurance coverage provided to comply with this Agreement, except the Business Auto Coverage policy, shall prohibit Design Professional, or Design Professional's employees, or agents, from waiving the right of subrogation prior to a loss. Design Professional agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

C. All insurance coverage and limits provided by Design Professional and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

D. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

E. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

F. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises, and City shall be responsible for the cost of any additional insurance required. Design Professional shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

G. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured

endorsement to Design Professional's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City may terminate this agreement in accordance with Section 19 of the Agreement.

H. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Design Professional agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

I. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Design Professional or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to City.

J. Design Professional agrees to ensure that subconsultants, and any other party involved with the Services who is brought onto or involved in the Services by Design Professional, provide the same minimum insurance coverage required of Design Professional; provided, however that only subconsultants performing professional services will be required to provide professional liability insurance. Design Professional agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Design Professional agrees that upon request, all agreements with subcontractors and others engaged in the Services will be submitted to City for review.

K. Design Professional agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, architect, consultant or other entity or person in any way involved in the performance of work on the Services contemplated by this agreement to self-insure its obligations to City. If Design Professional's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Design Professional, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

L. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Design Professional ninety (90) days advance written notice of such change. If such change results in additional cost to the Design Professional, and the City requires Design Professional to obtain the additional coverage, the City will pay Design Professional the additional cost of the insurance.

M. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

N. Design Professional acknowledges and agrees that any actual or alleged failure on the part of City to inform Design Professional of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

O. Design Professional will endeavor to renew the required coverages for a minimum of three years following completion of the Services or termination of this agreement and, if Design Professional is unable to do so, Design Professional will notify City at least thirty days prior to the cancellation or expiration of the policy or policies.

P. Design Professional shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Design Professional's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

Q. The provisions of any workers' compensation or similar act will not limit the obligations of Design Professional under this agreement. Design Professional expressly agrees that any statutory immunity defenses under such laws do not apply with respect to City, its employees, officials and agents.

R. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

S. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

T. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

U. Design Professional agrees to be responsible for ensuring that no contract entered into by Design Professional in connection with the Services authorizes, or purports to authorize, any third party to charge City an amount in excess of the fee set forth in the agreement on account of insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

V. Design Professional agrees to provide immediate notice to City of any claim or loss against Design Professional arising out of the work performed under this

Kennedy/Jenks Consultants Professional Services Agreement

agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

**EMPLOYMENT AGREEMENT BETWEEN CITY OF CALISTOGA AND  
RACHEL MELICK FOR PARKS & RECREATION DIRECTOR**

THIS AGREEMENT between the CITY OF CALISTOGA ("City") and RACHEL MELICK ("Employee") is deemed effective July 17, 2018 ("Effective Date").

**RECITALS**

WHEREAS, Employee currently serves as Recreation Manager for the City of Calistoga and has served in this capacity since November 7, 2016; and

WHEREAS, City desires to retain the services of Employee to serve as the Director of Parks & Recreation; and

WHEREAS, on July 17, 2018, the City Council considered text amendments to the Calistoga Municipal Code Chapter 2.10 by adding the "Director of Parks & Recreation" as part of a Council goal to expand and promote active lifestyles within the community; and

WHEREAS, Employee desires to continue to serve the City of Calistoga in a new role as Parks & Recreation Director; and

WHEREAS, the City Manager has appointing power in accordance with Calistoga Municipal Code Section 2.10.080 approved by the City Council on July 17, 2018, and Employee desires to agree in writing to the terms and conditions of Employee's employment as Parks & Recreation Director for the Calistoga Parks & Recreation Department.

**AGREEMENT**

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

**1. DUTIES.**

(a) City agrees to employ Employee as Director of the Parks & Recreation Department to perform the functions and duties specified in the ordinances and resolutions of City and to perform other legally permissible and proper duties and functions as the City Council may from time to time assign.

(b) Employee shall perform her duties to the best of her ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by City.

(c) Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement and annually thereafter, Employee must complete disclosure forms required by law.

## **2. TERM.**

(a) The term of this Agreement shall be from the Effective Date until terminated by either party in accordance with the provisions set forth in Paragraph 3 or by the event of the death or permanent disability of Employee.

(b) Employee agrees to remain in the exclusive employ of City during the term of this Agreement and not to be otherwise employed during the term of this Agreement.

## **3. RESIGNATION AND TERMINATION.**

(a) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from her position as Parks & Recreation Director for the City. Employee may terminate this Agreement by submitting written notice of her resignation to City. Employee shall give the City thirty (30) days written notice of her intention to resign.

(b) Employee is an "at-will" employee who serves at the pleasure of the City and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of the City to terminate the services of Employee as Parks & Recreation Director with or without cause at any time. There is no express or implied promise made to Employee for any form of continued employment as the Parks & Recreation Director. Further, nothing in this Agreement is intended to, or does, confer upon Employee any due process right to a hearing or other administrative process pertaining to termination, before or after a decision by the City to terminate her employment, unless Employee is entitled to a name clearing hearing under California or federal law.

(c) In the event the City requests Employee to resign from her position as Parks & Recreation Director for reasons other than cause, Employee shall be entitled to four months' severance pay at Employees then current rate of pay. Employee may choose to take payment at the time of separation or on January 15<sup>th</sup> of the following year from separation.

(d) Pursuant to Government Code section 53243, et seq., if Employee is convicted of a crime involving an abuse of her office or position, all of the following shall apply upon final conviction: (1) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse such amounts paid; (2) if the City, in its discretion, pays for the criminal legal defense of Employee, Employee shall be required to fully reimburse such amounts paid; and (3) if Employee is provided with any severance pay and/or settlement pay, Employee shall be required to reimburse such pay. For purposes of this Section, "abuse of office or position" shall be as defined under California Government Code section 53243.4.



#### **4. COMPENSATION AND BENEFITS.**

(a) City agrees to place Employee as Parks & Recreation Director at Range 51, Step 1, for an annual salary of one hundred twenty thousand, two hundred and eighteen dollars (\$120,218) payable in installments at the same time as other employees of the City are paid. Upon satisfactory annual evaluations Employee will be eligible for Step and/or Range increases as approved by the City Manager.

(b) For the purposes of eligibility for Step increases Employee's anniversary date is reset to July 18, but for purposes of determining longevity Employee's original date of hire will be the determinant.

(c) In addition to any Step and/or Range increases employee may be entitled to, and consistent with other bargaining units and/or MOU's, Employee shall be provided any other salary or COLA adjustments provided to other department directors within the City.

(d) City will provide Employee with the same: holidays; long-term disability benefits; retirement benefits; insurance benefits including, but not limited to, life, health and dental coverage, and; vacation and compensatory leave in the same manner provided to other Department Directors and consistent with the State's retirement benefits.

(e) Employee shall be granted forty (40) hours of administrative leave on January 1 and July 1 of each year.

(f) Employee shall be entitled to vacation leave annually as per City Policy. Employee shall also be entitled to eight (8) hours of sick leave per month.

(g) City shall compensate Employee 100% of all unused vacation and administrative leave at Employee's current rate of pay at the time of separation. Employee shall be compensated for 25% of unused sick leave balance at Employee's current rate of pay at the time of separation.

(h) In the event Employee is assigned temporary duties as Acting City Manager for more than three consecutive days, Employee shall receive a 10% salary increase for out of class pay.

#### **5. SUPPLEMENTAL BENEFITS.**

(a) Employee has the option of either being assigned a marked City vehicle or being compensated not less than one-hundred and fifty dollars (\$150) per month as a monthly car allowance, or other amount as approved by the City Manager.

## **6. INDEMNIFICATION.**

Except as otherwise provided in Section 3(d) of this Agreement, City shall defend, save harmless, and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Parks & Recreation Director. City will compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to Employee as described herein, for any acts undertaken or committed in her capacity as Parks & Recreation Director, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following Employee's employment with City as Parks & Recreation Director. Further, following employment with City, City agrees to pay Employee reasonable consulting fees and travel expenses in the event Employee serves as a witness, advisor and or consultant to City regarding any pending litigation involving City.

## **7. CONFLICT OF INTEREST PROHIBITION.**

It is further understood and agreed that because of the duties of the Parks & Recreation Director within and on behalf of the City of Calistoga, and its citizenry, the Employee shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Calistoga except for stock ownership in any company whose capital stock is publicly held and regularly traded, without the prior consent of the City Council. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as her personal residence, not to invest in any other real estate property improvements within the corporate limits of the City of Calistoga, without the prior consent of the City Council.

## **8. OTHER TERMS AND CONDITION OF EMPLOYMENT.**

(a) The City Council, by resolution, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

## **9. GENERAL EXPENSES.**

City encourages professional development and engagement with Employee's peers and professional associations and recognizes and agrees to pay the job-related expenses incurred by Employee in the course of her duties as approved by the City Manager.

**10. NOTICES.**

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with postage prepaid and addressed as follows:

TO CITY:                      City Manager  
                                    City of Calistoga  
                                    1232 Washington Street  
                                    Calistoga, CA 94515

TO EMPLOYEE:      Rachel Melick  
                                    Address on file with Human Resources

**11. ATTORNEY'S FEES.**

In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorney's fees and costs.

**12. ENTIRE AGREEMENT.**

This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties.

**13. ASSIGNMENT.**

This Agreement is not assignable by either City or Employee.

**14. SEVERABILITY.**

In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

**15. EFFECTIVE DATE.**

This Agreement shall be deemed effective on the Effective Date.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed on its behalf by its City Manager. It has also been executed by the Employee on the date first above written.

CITY OF CALISTOGA

By: 

Dylan Feik, City Manager

EMPLOYEE

By: 

Rachel Melick

## USE AGREEMENT

This Use Agreement (the "**Agreement**") is entered into as of September 4, 2018, the Effective Date, by and between the City of Calistoga, a municipal corporation ("**City**") and Calistoga Little League, a California Non-Profit Corporation ("**User**") (each, a "**Party**" and collectively the "**Parties**").

### R E C I T A L S

User desires to use the City property located at 414 Washington Street, Calistoga; a portion of APN 011-260-003 and 011-260-002, as generally set forth in Exhibit A (the "**Property**") for the purpose of Calistoga Little League events and City has agreed to such use at a rate of \$1.00 per year.

The parties desire to formalize their understandings regarding the use of the Property.

### T E R M S

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the parties agree as follows:

1. Term. The term of this Agreement shall commence on September 4, 2018, and terminate on December 31, 2023 (the "**Term**").

2. Payment. User covenants and agrees to pay City the sum of \$1.00 per year with such payments sent to: City of Calistoga, 1232 Washington Street, Calistoga, CA 94515, Attention: Finance, by the second day of January of each year.

3. Use of Property.

(a) The City hereby grants to User the right and privilege of using the Property for public, community and/or recreational purposes in accordance with the terms and conditions of this Agreement and in accordance with applicable law. User will occupy and use and maintain the Property only for Calistoga Little League activities and pursuant to the conditions set forth in Exhibit B, attached hereto and incorporated herein by reference.

(b) User agrees to provide the times and programs it anticipates for each regular season (February 1 through July 31) and potential activities that may occur during the off season (August 1 through March 31) by March 1 of each year to City.

4. Waiver and Indemnity. User hereby waives and releases City and its respective employees, officers, agents, boards, commissions, and assigns (hereinafter collectively referred to as "**Released Parties**") from any and all manner of rights, liabilities, claims, actions, causes of action, suits, proceedings, demands, damages, costs, expenses (including attorney fees and costs) or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent ("**Claims**"), including without limitation any damage to User's belongings or property or for any harm, injury, or death to the User's employees, officers, agents or assigns, that User may have or which may arise in the future arising out of, directly or indirectly, or in any way connected with

this Agreement or User's use of the Property, except for Claims arising out of the sole negligence or willful misconduct of City.

Except for City's sole negligence or willful misconduct, User shall defend, indemnify and hold harmless City from and against any and all claims which actually or allegedly arise out of or are related to User's use or occupancy of the Premises, or which actually or allegedly arise out of or are related to the conduct of User's business or which actually or allegedly arise out of or are related to any activity, work or things done or permitted by User, or its employees, contractors or agents, in or about the Premises and shall further indemnify and hold harmless City from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon.

5. Insurance. At its cost and expense, User shall maintain in full force and effect during the Term commercial general liability insurance no less broad than ISO form CG 00 01 with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury, personal injury and property damage insuring against claims which may arise from or in connection with User's occupancy and use of the Property. If User maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by the User. Such insurance shall be endorsed to include the City as additional insureds for ongoing and completed operations, shall be primary and noncontributory with City insurance and shall provide severability of interests between or among insureds.

User shall deliver certificates of insurance evidencing such insurance and additional insured endorsements prior to the first date of the Term. The insurance shall be issued by insurers licensed to do business in the state of California and which are rated A:X or better by Best's Key Rating Guide. User shall provide the City immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, User shall forthwith obtain and submit proof of substitute insurance.

6. Disclaimer of Condition of Property. City makes no warranty or representation of any kind or nature regarding the Property or the fitness of the Property for the use intended by User. User has inspected the Property, knows and accepts its condition and waives any express or implied warranty against the City.

7. Removal of User's Property. User understands and agrees that User is responsible for removing its belongings and personal property from the Property prior to the end of the Term or earlier termination of this Agreement, or as provided in Exhibit A. In addition, User shall repair any damage to the Property that arises out of this Agreement and the User's use to the satisfaction of City and return the Property to the condition as of the Effective Date. User shall not be responsible for damage caused from the City's use of the Property.

8. Compliance With Laws. User will comply with all applicable local, state and federal laws and regulations with respect to the terms and conditions of this Agreement, including, if applicable, the requirement to obtain a City of Calistoga business license.

9. Assignment. User may not assign this Agreement or any part of it without the prior written consent of City.

10. Amendments. This Agreement may be amended by mutual consent of City and User. Any amendment will be in writing, signed by both Parties.

11. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment which may become due under this Agreement will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

12. Termination. City or User may terminate this Agreement at any time upon written notice to the other Party, with such termination effective in sixty (60) days. User will pay for use of the Property up to the effective date of the termination.

13. Notices. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally, or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

For City:

City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515  
Telephone: (707) 942-2803  
Attention: City Clerk

For User:

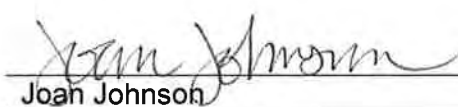
Calistoga Little League  
P.O. Box 212  
Calistoga, CA 94515  
Telephone: 942- 6386  
Attention: Joan Johnson, President

Either Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

This Agreement is executed by User and City as of the Effective Date.

**USER:**

**Calistoga Little League**, a California Non-Profit Corporation

By:   
Name: Joan Johnson  
Title: President

**CITY:**

**City of Calistoga**, a municipal corporation

By:   
Dylan Feik, City Manager

ATTEST:

By:   
Kathy Flanigan, City Clerk

EXHIBIT A  
**AREA OF USE**

**SEE FOLLOWING PAGE**



## EXHIBIT B

### **CONDITIONS OF USE**

1. User shall use the premises solely for the little league use uses that promote its mission including operation of the existing concession stand, and special fundraising events.
2. The City, at no charge, shall supply both potable and non-potable water to the property and the ability to discharge domestic waste to the sanitary sewer system.
3. User shall make all arrangements for and pay any connection, service and termination charges levied in connection with all utilities and services, other than water and sewer, furnished to or used in connection with the premises.
4. The City shall be responsible to regulate irrigation on turf areas.
5. The City shall fertilize and mow the turf areas.
6. All other maintenance, including but not limited to painting, striping, fencing, garbage and trash removal, safety issues, etc., shall be the sole responsibility of User.
7. User shall spray for weed control as necessary along the fence lines, the ball field warning track, and the gravel parking area. Application shall be applied in strict accordance with the manufacturer's recommendations.
8. User shall not construct new structures, make any alterations to the premises nor construct any improvements upon the premises without the City's prior written consent. The City shall have no obligation to give such consent. All construction and alterations shall, at the option of the City, remain on and be surrendered with the premises upon expiration or terminations of this Agreement.
9. User understands and agrees that User is responsible for removing its belongings and personal property from the Property prior to the end of the Term or earlier termination of this Agreement.

**CITY OF CALISTOGA  
PROFESSIONAL SERVICES AGREEMENT,  
PHASE I - RIVERSIDE POND RELOCATION PROJECT**

**AGREEMENT NO. 792**

THIS AGREEMENT is entered into as of the 5<sup>th</sup> day of September 2018 by and between the CITY OF CALISTOGA ("City"), a California municipal corporation, and ENVIRONMENTAL SCIENCE ASSOCIATES, ("Design Professional").

Recitals

WHEREAS, City desires to obtain design services in connection with Phase I of the Riverside Pond Relocation Project (Project); and

WHEREAS, Design Professional hereby warrants to the City that Design Professional is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Design Professional pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Design Professional shall perform the services as set out in the "Scope of Work" attached hereto as Exhibit "A."

2. Time of Performance. The services of Design Professional are to commence within 10 days of receiving the City's Notice to Proceed and be completed not later than December 1, 2019

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Design Professional, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A." However, in no event shall the amount City pays Design Professional exceed Four-Hundred and Seventy-Five Thousand Dollars (\$475,000). Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Design Professional shall submit itemized monthly statements for work performed prior to the 19<sup>th</sup> of the month. City shall submit request for payment for all undisputed work for processing of payment under the City's next regularly scheduled check run which is typically the 10<sup>th</sup> of the month. City shall notify Design Professional within 5 days of any request for any payment, or portion thereof that is in dispute.

C. Changes in Compensation. Design Professional will not undertake any work that will incur costs in excess of the amount set forth in Paragraph 3(A) without prior written amendment to this Agreement.

D. Taxes. Design Professional shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Design Professional.

E. No Overtime or Premium Pay. Design Professional shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Design Professional shall not receive a premium or enhanced pay for work performed on a recognized holiday. Design Professional shall not receive paid time off for days not worked, whether it be in the form of sick leave, administrative leave, or for any other form of absence.

F. Litigation Support. Design Professional agrees to testify at City's request if litigation is brought against City in connection with Design Professional's report. Unless the action is brought by Design Professional or is based upon Design Professional's negligence, City will compensate Design Professional for the preparation and the testimony at Design Professional's standard hourly rates, if requested by City and not part of the litigation brought by City against Design Professional.

4. Amendment to Scope of Work. City shall have the right to amend the Scope of Work within the Agreement by written notification to the Design Professional. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. Failure of the Design Professional to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate authorization by both parties. Design Professional shall not be required to commence extra or changed work without a written amendment or change order signed by all parties.

5. Duties of City. City shall provide all information requested by Design Professional that is reasonably necessary to performing the Scope of Work. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement.

6. Ownership of Documents.

A. The plans, specifications, estimates, programs, reports, models, and other material prepared by or on behalf of Design Professional under this Agreement including all drafts and working documents and including electronic and paper forms (collectively the "Documents"), shall be and remain the property of the City, whether the Services are completed

or not. Design Professional shall deliver all Documents to City, upon request at (1) the completion of the Services, (2) the date of termination of this Agreement for any reason, or (3) any time requested by City, upon five (5) days prior written notice.

B. The Documents may be used by City and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes City may deem advisable without further employment of or payment of any compensation to Design Professional. In the event the City chooses to utilize the Documents for purposes other than as specified in the Scope of Work Design Professional shall not be liable for said use outside of this Agreement.

C. Design Professional retains the copyright in and to the intellectual property depicted in the Documents subject to Design Professional's limitations and City's rights and licenses set forth in this Agreement. City's ownership interest in the Documents includes the following single, exclusive license from Design Professional: Design Professional, for itself, its employees, heirs, successors and assigns, hereby grants (and if any subsequent grant is necessary, agrees to grant) to City an irrevocable, perpetual, royalty-free, fully paid, sole and exclusive license and right to use and exercise any and all of the copyrights or other intellectual property rights that Design Professional may author or create, alone or jointly with others, in or with respect to the Documents, including without limitation all analysis, reports, designs and graphic representations. City's license shall include the right to sublicense, shall be for all purposes with respect to each right of copyright, and shall be without restriction.

D. Design Professional shall include in all subcontracts and agreements with respect to the Services that Design Professional negotiates, language which is consistent with this Section 6.

E. All reports, information, data, and exhibits prepared or assembled by Design Professional in connection with the performance of its Services pursuant to this Agreement are confidential until released by the City to the public, and the Design Professional shall not make any of these documents or information available to any individual or organization not employed by the Design Professional or the City without the written consent of the City before any such release.

7. Employment of Other Design Professionals, Specialists or Experts.

A. Design Professional will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the City. Any consultants, specialists or experts approved by City are listed in Exhibit "B."

B. Design Professional represents that it has, or will secure at its own expense, all personnel required in performing the Services. All of the Services required hereunder will be performed by the Design Professional or under Design Professional's supervision, and all personnel engaged in the work shall be qualified to perform such services.

C. Design Professional shall make every reasonable effort to maintain stability and continuity of Design Professional's Key Personnel assigned to perform the Services. Key Personnel for this contract are listed in Exhibit "A".

D. Design Professional shall provide City with a minimum twenty (20) days prior written notice of any changes in Design Professional's Key Personnel, provided that Design Professional receives such notice, and shall not replace any Key Personnel with anyone to whom the City has a reasonable objection.

E. Design Professional plans to retain the subconsultants listed in Exhibit "B", who will provide services as indicated in Exhibit "A".

F. Design Professional will not utilize subconsultants other than those listed in Exhibit "B" without advance written notice to the City. Design Professional will not utilize a subconsultant to whom the City has a reasonable objection. Subconsultants providing professional services will provide professional liability insurance as required in Exhibit "C" unless the City waives this requirement, in writing.

8. Conflict of Interest.

A. Design Professional understands that its professional responsibility is solely to City. Design Professional warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Design Professional shall not knowingly, and shall take reasonable steps to ensure that it does not, employ a person having such an interest in the performance of this Agreement. If Design Professional discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Design Professional shall promptly disclose the relationship to the City and take such action as the City may direct to remedy the conflict.

B. Design Professional (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Design Professional's Services hereunder. Design Professional further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

C. Design Professional is not a designated employee within the meaning of the Political Reform Act because Design Professional:

(1) Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official other than normal contract monitoring; and

(2) Possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel (FPPC Reg. 18700(a)(2)).

9. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects its personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

10. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Design Professional or otherwise in the event of any default or breach of the City, or for any amount which may become due to Design Professional or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

11. Indemnity.

A. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.8), Design Professional shall defend (with legal counsel reasonably acceptable to the City) indemnify and hold harmless City and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Design Professional or its sub-Design Professionals), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, court costs, attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation), that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Professional, any sub-Design Professional, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

B. Neither termination of this Agreement nor completion of the Services shall release Design Professional from its obligations under this Section 11, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

C. Design Professional agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Design Professional in the performance of this Agreement. If Design Professional fails to obtain such indemnity obligations from others as required, Design Professional shall be fully responsible for all obligations under this Section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Design Professional and shall survive the termination of this Agreement or this section.

D. Design Professional's compliance with the insurance requirements does not relieve Design Professional from the obligations described in this Section 11, which shall apply whether or not such insurance policies are applicable to a claim or damages.

12. Design Professional Not an Agent of City. Design Professional, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

13. Independent Contractor. It is understood that Design Professional, in the performance of the work and services agreed to be performed by Design Professional, shall act as and be an independent contractor as defined in Labor Code 3353 and not an agent or employee of City; and as an independent contractor, Design Professional shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Design Professional hereby expressly waives any claim it may have to any such rights.

14. Compliance with Laws.

A. General. Design Professional shall (and shall cause its agents and subcontractors), at its sole cost and expense, comply with all applicable federal, state and local laws, codes, ordinances and regulations now in force or which may hereafter be in force for the duration of the Agreement. Any corrections to Design Professional's reports or other Documents (as defined in Section 6) that become necessary as a result of Design Professional's failure to comply with these requirements shall be made at the Design Professional's expense.

B. Updates. Should Design Professional become aware that the requirements referenced in subparagraph A above change after the date of a report or other Document is prepared and accepted by the City, Design Professional shall be responsible for notifying City of such change in requirements. Design Professional will bring the Documents into conformance with the newly issued requirements at the written direction of City. Design Professional's costs for providing services pursuant to this paragraph shall be submitted to City as Additional Services.

C. Licenses and Permits. Design Professional represents that it has the skills, expertise, licenses and permits necessary to perform the Services. Design Professional shall perform all such Services in the manner and according to the standards observed by a competent practitioner of the same profession in which Design Professional is engaged. All products of whatsoever nature which Design Professional delivers to City pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in Design Professional's profession. Permits and/or licenses shall be obtained and maintained by Design Professional without additional compensation throughout the term of this Agreement.

D. Documents Stamped. Design Professional shall have documents created as part of the Services to be performed under this Agreement stamped by registered professionals for the disciplines covered by Design Professional's Documents when required by prevailing law, usual and customary professional practice, or by any governmental agency having jurisdiction over matters related to the Services. Design Professional will stamp other documents as noted in

the Scope of Work. The City will not be charged an additional fee to have such documents stamped.

E. Workers' Compensation. Design Professional certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Design Professional certifies that it will comply with such provisions before commencing performance of this Agreement.

F. Prevailing Wage. Design Professional and Design Professional's sub-consultants, shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's Public Works Department office.

G. Injury and Illness Prevention Program. Design Professional certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

H. City Not Responsible. The City is not responsible or liable for Design Professional's failure to comply with any and all of said requirements.

15. Nonexclusive Agreement. Design Professional understands that this is not an exclusive Agreement and that City shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Design Professional as the City desires.

16. Confidential Information. All data, documents, discussions or other information developed or received by or for Design Professional in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

17. Insurance. Design Professional shall provide insurance in accordance with the requirements of Exhibit "C".

18. Assignment Prohibited. Design Professional shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of City and any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

19. Termination.

A. If Design Professional at any time refuses or neglects to prosecute its Services in a timely fashion or in accordance with the schedule, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its Services, or otherwise



fails to perform fully any and all of the agreements herein contained, Design Professional shall be in default.

B. If Design Professional fails to cure the default within seven (7) days after written notice thereof, City may, at its sole option, take possession of any Documents or other materials (in paper and electronic form) prepared or used by Design Professional and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Design Professional under this Agreement; and/or (2) terminate Design Professional's right to proceed with this Agreement.

C. In the event City elects to terminate, City shall have the right to immediate possession of all Documents and work in progress prepared by Design Professional, whether located at Design Professional's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Design Professional shall not be entitled to receive any further payment under this Agreement until the Services are completely finished.

D. In addition to the foregoing right to terminate for default, City reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Design Professional. In the event of termination without cause, Design Professional shall be entitled to payment in an amount not to exceed the Not-To-Exceed Amount which shall be calculated as follows: (1) Payment for Services then satisfactorily completed and accepted by City, plus (2) Payment for Additional Services satisfactorily completed and accepted by City, plus (3) Reimbursable Expenses actually incurred by Design Professional, as approved by City. The amount of any payment made to Design Professional prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2) and (3) above. Design Professional shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of such termination and payment. In addition, the City's right to withhold funds under Section 19.C. shall be applicable in the event of a termination for convenience.

E. If this Agreement is terminated by City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section 20 and Design Professional shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

20. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as he/she deems necessary due to unfavorable conditions or to the failure on the part of the Design Professional to perform any provision of this Agreement. Design Professional will be paid for satisfactory Services performed through the date of temporary suspension. In the event that Design Professional's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Design Professional's reasonable control, Design Professional's compensation shall be subject to renegotiation.

21. Entire Agreement and Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between City and Design Professional and supersedes any previous agreements, whether verbal or written, concerning the same subject matter. This Agreement may only be amended or extended from time to time by written agreement of the parties hereto.

22. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

23. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

24. Time of the Essence. Time is of the essence of this Agreement.

25. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City Manager  
City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515

If to Design Professional: Scott Stoller, P.E.  
Environmental Science Associates  
550 Kearny Street, Suite 800  
San Francisco, CA 94108

## 26. Design Professional's Books and Records.

A. Design Professional shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Design Professional.

B. Design Professional shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Design Professional's address indicated for receipt of notices in this Agreement.

D. City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in the City Manager's office. Access to such records and documents shall be granted to any party authorized by Design Professional, Design Professional's representatives, or Design Professional's successor-in-interest.

E. Pursuant to California Government Code Section 10527, the parties to this Agreement shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

27. Equal Employment Opportunity. Design Professional is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Design Professional will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Design Professional will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Design Professional further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

28. Unauthorized Aliens. Design Professional hereby promises and agrees to comply with all the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. § 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Design Professional so employ such unauthorized aliens for performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Design Professional hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

29. Section Headings. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

30. City Not Obligated to Third Parties. City shall not be obligated or liable for payment hereunder to any party other than the Design Professional.

31. Remedies Not Exclusive. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

32. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

33. No Waiver of Default. No delay or omission of City to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to City shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of City.

34. Successors and Assigns. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

35. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit A: Scope of Work; Schedule, Compensation
- B. Exhibit B: Other Consultants, Specialists or Experts Employed by Design Professional
- C. Exhibit C: Insurance Requirements to Design Professional Services Agreement

36. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

37. News Releases/Interviews. All Design Professional and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

38. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Sonoma, California.

39. Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Design Professional hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Design Professional is obligated, which breach would have a material effect hereon.

IN WITNESS WHEREOF, the City and Design Professional have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

By: \_\_\_\_\_

  
Dylan Feik, City Manager

ENVIRONMENTAL SCIENCE  
ASSOCIATES

By: \_\_\_\_\_

  
Ann Borgonovo, P.E.

Title: Senior Engineer

ATTEST:

By: \_\_\_\_\_

  
Kathy Flamson, City Clerk

## EXHIBIT A

### Scope of Work, Schedule, Compensation

## Calistoga Riverside Ponds

HMGP #4240-20-27R

# Phase I Scope of Work

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## Project Understanding

The City of Calistoga operates a Wastewater Treatment Plant (WWTP) at the confluence of the Napa River and Simmons Creek in Calistoga, CA. Portions of the WWTP are at risk of flooding and bank erosion from channel migration. The primary objective of this project is to reduce the flooding and erosional risk for wastewater treatment infrastructure located along the banks and at the confluence of Simmons Creek and the Napa River. In particular, the headworks located on the northeast part of the confluence and existing storage ponds located on the northern bank of the Napa River have eroded to the point that warrants implementation of active bank protection measures. A secondary objective of the project is to upgrade select WWTP facilities to reduce Trihalomethane (THM) levels in effluent, monitor THM levels, and automate the discharge of wastewater dependent on instantaneous flowrates in the Napa River. There are several associated work elements that will support the primary purpose of the project, which include:

- Stabilizing channel banks at up to four (4) locations adjacent to treatment plant infrastructure
- Installing grade control structure at confluence of Simmons Creek and Napa River, if deemed prudent
- Abandoning Ponds 1 through 3, including minor regrading
- Raising the berm of Pond 4 to maintain overall storage capacity
- Improving Pond 4 infrastructure including new SCADA system to automate effluent discharge to Napa River
- Constructing new drainage ditch from Pond 1 to Simmons Creek
- Electrical and hydraulic improvements at the headworks
- Revegetating disturbed areas

## Scope of Services

A detailed description of our scope of services is provided in the following tasks.

## **TASK 1. Field Investigations**

### **1.1 Topographic Survey (Doble Thomas)**

Our team will conduct a detailed ground-based topographic survey of the project site. The survey will create a base map to support the hydraulic analysis and modeling, design of civil improvements and locate existing vegetation to guide restoration design, and provide a basis for construction quantity take-offs.

**Survey Control** - Survey Control will be established in CA State Plane Zone 2 (horizontal) and NAVD88 (vertical feet). Survey Control and Benchmarks will be established on site for future use.

**Topographic Survey** – The topographic survey will be conducted to generate a topographic map of the project area including relevant ground features (trees, fences, exposed pipes, etc.) within the survey footprint. Data from the ground survey will be incorporated with LiDAR and other available survey information to complete the project base map. The topographic survey will cover an approximate area of 1,900 feet by 200 feet that includes:

- Bathymetric survey of Pond 4. LiDAR and other available survey data will be utilized for Ponds 1, 2 and 3.
- Cross sections for Oat Hill Mine Ditch on river side of Pond 4 approximately 360 linear feet (LF) at 50-foot spacing
- Cross sections on Napa River, 900 LF at approximately 50-foot spacing
- Cross sections on Simmons Creek 320 LF at approximately 15-foot spacing and profile of channel thalweg (flowline) from confluence with Napa River to approximately 50-foot upstream of the Bridge on Simmons Creek, and
- Trees larger than 5 inches within survey area (per regulatory requirement).

#### **Deliverable:**

A signed and sealed copy of the survey work product as an Adobe PDF and an AutoCAD drawing file.

#### **Assumptions:**

We assume that the City will supply all utility information, including pipes and conduits to tie-into for design and that no additional survey of existing infrastructure will be required east of Simmons Creek top of bank.

### **1.2 Geotechnical Studies (A3Geo)**

The purpose of the geotechnical work is to assess the condition of the site's soils and provide recommendations for accomplishing the proposed work. Our geotechnical engineer will sample proposed berm fill materials and in-situ soils, perform geotechnical laboratory tests, evaluate the geotechnical suitability of the soils tested, drill four (4) borings in bank stabilization areas, two (2) borings in fill stockpile, and prepare a report containing geotechnical data, conclusions and recommendations for the design and construction of the Project. Specifically, these elements of this work include:



- Researching the geotechnical, geologic, seismic and historical setting of the site.
- Conducting a geotechnical reconnaissance of the site to evaluate drill rig access and mark proposed boring locations in the field. During the same visit, we will visit City soil stockpiles to obtain samples using a shovel and 5-gallon buckets.
- Obtaining the requisite drilling permit(s), notifying Underground Service Alert (USA) and scheduling a subcontractor to drill the borings.
- Drilling, sampling and logging a total of six (6) borings at/near the locations marked during our reconnaissance.
- Performing geotechnical laboratory tests to evaluate the physical properties of the onsite soils. The types of tests performed will depend upon the subsurface materials encountered, but will most likely consist of grain size distribution, plasticity, moisture content, and density.
- Characterizing subsurface conditions, consulting on bank stabilization alternatives and developing geotechnical recommendations in support of preferred bank stabilization design.

**Deliverable:**

A geotechnical investigation report for the project that will include: 1) a site plan with boring locations, 2) boring logs with laboratory test results, 3) a summary of site conditions, 4) discussions pertaining to geotechnical feasibility and design considerations, 5) evaluations and conclusions including slope stability analysis for the proposed work, and 6) geotechnical design and construction recommendations including (but not necessarily limited to) site preparation, earthwork/grading, slope stabilization and geotechnical suitability of proposed fill materials.

**Assumptions:**

- Seismic hazard evaluations (including liquefaction, lateral spreading, and/or seismic slope stability) and/or seismic hazard mitigation recommendations are not required. This analysis can be provided under supplemental scope and fee.
- Only one drilling permit will be required.
- Drilling subcontractor will spend no more than 8 hours onsite.
- Geotechnical conditions will allow the borings to be drilled using truck-mounted auger equipment.
- Drill cuttings will be left onsite near the borehole locations.
- Permission to enter and access the site will be arranged by others.
- Utilities clearances by a private utility locator are not required and A3GEO will not be responsible for any underground utility damage caused during completion of the proposed activities.

### **1.3 Geotechnical Testing Cultural Resources Support**

As detailed in the Project's Federal Emergency Management Agency (FEMA) Record of Environmental Consideration (REC), at least one previously recorded cultural resource has been identified within the Project Area (also the Area of Potential Effects [APE]) and that the resource is eligible for listing in the National Register of Historic Places (National Register). The REC also indicates that FEMA, as the Project's lead federal agency, has made a Finding of No Adverse Effect for the geotechnical testing portion of the Project, for purposes of Section 106 of the National Historic Preservation Act (Section

106), and that the California State Historic Preservation Officer has concurred with this determination. The REC establishes the following Special Conditions required by FEMA for the Project's geotechnical testing. ESA will provide cultural resources services to comply with the Special Conditions required by FEMA for the Project's geotechnical testing.

ESA will provide workforce cultural resources sensitivity training to contractors conducting subsurface investigations to comply with the Special Conditions for the Project's geotechnical testing, as required for FEMA. The workforce training will consist of a short (15-minute) presentation to be delivered to all construction personnel by a qualified archaeologist, defined as one meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology, and Native American tribal representative to cover: applicable laws and penalties pertaining to disturbing cultural resources; prehistoric and historic context of the area and potential types of archaeological material in the area; and procedures to follow if archaeological materials are encountered during Project-related construction activities. ESA assumes that only one training session will be necessary, and that the session can occur at the start of the first day of fieldwork requiring archaeological and Native American monitoring.

As part of this task, ESA will provide a qualified archaeologist and a Native American monitor (tribal monitor) to conduct monitoring and a limited archaeological subsurface survey for the geotechnical testing. The archaeologist and tribal monitor will be on-site during all Project-related ground-disturbing activities associated with the Project geotechnical testing and will monitor such activities for evidence of archaeological material. The archaeologist and tribal monitor will also accompany the moving of the geotechnical testing equipment to bore location 3, and will screen sediment, in 20-centimeter increments, recovered hand-augers at each bore location to a depth of 5 feet. The archaeologist and tribal monitor will dry-screen the sediment through ¼-inch wire mesh, looking for evidence of archaeological material. Any archaeological material identified, through monitoring or screening, will be recorded (i.e., notes, photos, sketches) and its location documented with a sub-meter-accuracy GPS unit; however, no archaeological material will be collected. The location of each bore will also be documented with a sub-meter-accuracy GPS unit. If intact archaeological deposits are identified in undisturbed sediment, the unanticipated discovery protocol from the applicable PA, as well as applicable procedures in California Health and Safety Code (HSC) Section 7050.5 and California Public Resources Code (PRC) Section 5097.98, will be followed, including stopping work in the vicinity of the find.

This task does not include collection or laboratory analysis of any archaeological material, nor does it include evaluation of resource eligibility for listing in the National Register or California Register of Historical Resources (California Register). This scope assumes that this task will require no more than two (2) days of fieldwork, at 10 hours/day, for one (1) archaeologist and one (1) tribal monitor.

Deliverable:

Geotechnical Testing Archaeological Monitoring Letter Report. Within 20 days of completion of the fieldwork portion of this task, ESA will provide the City with a letter report, in electronic format, documenting the results of the construction monitoring and archaeological sampling (screening).

### Assumptions:

- City will provide ESA with cultural resources documentation (e.g., reports, agency correspondence) previously conducted for Project geotechnical testing and other relevant projects at or adjacent to the site.
- Workforce sensitivity training will be conducted at the start of the first day of archaeological monitoring.
- No intact archaeological resources, in undisturbed sediment, will be identified during fieldwork.
- No National Register- or California Register-eligibility evaluations for resources are included.
- Archaeological monitoring will require no more than two (2) 10-hour days, for one (1) archaeologist and one (1) tribal monitor.
- No access issues or utilities constraints exist for the APE and City will coordinate access for fieldwork.
- ESA will provide the tribal monitor, likely from the Mishewal Wappo Tribe of the Alexander Valley, as a subcontractor, at a standard labor cost of \$65/hour.
- All deliverables will be in electronic format.

## **TASK 2. Permitting & Compliance**

### **2.1 Hydrology, Hydraulic Analysis, FEMA Compliance**

ESA will perform hydrologic and hydraulic analyses and prepare documentation needed to support a CLOMR submittal to FEMA under the National Floodplain Insurance Program (NFIP).

#### Hydrology Model

ESA will develop a hydrologic model of the Napa River watershed upstream of the project site using the HEC HMS modeling software and following FEMA standards and guidelines. We will analyze available gage data and select up to three storm events for model calibration and validation. We will use the calibrated HEC HMS model to estimate design flow rates for 10-yr, 25-year, 50-yr, 100-yr, and 500-yr recurrence intervals.

#### Hydraulic Analysis

ESA will perform hydraulic analyses using the HEC RAS one dimensional hydraulic modeling software and following FEMA standards and guidelines. We will obtain the current FEMA Effective model for the Napa River at the project site and use it to create a Duplicate Effective model. If needed, this model will be updated to reflect current topography and channel geometry to form a Corrected Effective (existing conditions) model. We will run the Corrected Effective model with the updated flow rates developed in HEC HMS. The Corrected Effective model will be modified to reflect project conditions, and the resulting water surface elevations will be compared to existing conditions. A Floodway Analysis will be conducted to show that the project meets NFIP requirements.

### CLOMR Submittal

ESA will prepare MT-2 forms and supporting documentation for a CLOMR submittal to FEMA.

#### **Deliverable:**

Draft and final CLOMR submittal including MT-2 forms and supporting technical report summarizing hydrologic modeling and hydraulic analysis.

#### **Assumptions:**

- ESA will finalize the draft submittal based on one set of consolidated comments.
- The City of Calistoga will submit the CLOMR application and pay submittal fees to FEMA.
- A LOMR submittal will be prepared after project construction (Phase II).

### **2.2 CEQA Documentation**

ESA will prepare an Initial Study/Mitigated Negative Declaration (IS/MND) that is consistent with the CEQA Guidelines and the City of Calistoga (City) requirements. ESA will submit a request for information (RFI) to the City to support development of the project description and the evaluations required for the IS/MND. ESA can supply an Excel spreadsheet to assist the project team with providing this information. This task will include a Kickoff Meeting (via telephone call) between ESA and the City to discuss the project design.

Based on the responses to the RFI, ESA shall prepare a CEQA project description as needed to support the IS/MND. ESA will work with the City to develop a project description that reduces impacts to the extent practicable. ESA shall complete one (1) round of revision of the draft project description, based on one (1) round of comments received from the City prior to incorporation into the Initial Study (IS).

ESA will then complete an IS/MND that is consistent with Section 15063 of the CEQA Guidelines. ESA shall review available data to characterize the existing conditions of the project area and to identify potential impacts for the project site. The IS/MND will also identify a list of potential permits and other approvals needed for project implementation. The CEQA analysis will be supported by the permitting work and technical studies conducted under Task 2.3 *Permit Applications* included in this scope of work.

ESA will submit the Draft IS/MND to the City for one (1) round of review.

ESA shall provide one (1) round of updates based on City comments, and prepare the Screencheck IS/MND and submit to the City for review. ESA will update the Screencheck IS/MND, and prepare a Mitigation Monitoring and Reporting Plan (MMRP).

ESA shall provide fifteen (15) hard copies of the IS/MND for delivery to the State Clearinghouse, plus up to ten (10) additional hard copies for the City for circulation to local agencies and other interested parties. ESA will assist the City with preparation and filing of the public Notice of Intent (NOI) and Notice of Completion (NOC) of the IS/MND. The IS/MND will be circulated for the customary 30-day review period.

Upon completion of the 30-day public review period, ESA shall assist the City in preparing responses to all comments received on the IS/MND. Following certification and project approval, ESA will prepare the Notice of Determination (NOD) and file with the County Clerk.

Deliverables:

- Request for Information (RFI)
- Draft Project Description
- Draft Initial Study
- Screencheck Initial Study, with MMRP and MND
- Public Draft Initial Study with MND
- Notice of Intent
- Notice of Completion
- Draft text containing responses to comments on the Draft IS/MND
- Final Responses to Comments and MMRP
- Notice of Determination

**Subtask 2.2.1 – Native American Consultation Support**

ESA proposes this task to support project compliance with California Public Resources Code (PRC) Section 21080.3.1, as part of overall project CEQA compliance.

ESA will draft letters for the City to send to each Native American representative provided in the Native American Heritage Commission (NAHC) correspondence to be conducted as part of the Permitting task of this scope. The letters will include a brief project description and map, language inviting the recipients to consult under PRC Section 21080.3.1, and a request that the recipients contact the City with any concerns regarding potential Project impacts to cultural resources. An ESA archaeologist will also assist the City in conducting one (1) on-site visit with interested Native American representatives to review the Project setting and proposed Project elements - this visit is the same as that accounted for in Subtask 2.3.1 of this scope and, therefore, is not included as additional budget for the current task. ESA will maintain documentation of Native American consultation activities, which will be used to produce the tribal cultural resources section of the IS/MND, as scoped in Task 2.2. Any additional Native American correspondence or coordination for compliance with PRC Section 21080.3.1 will be conducted by the City.

Deliverables:

Draft Native American consultation letters for PRC Section 21080.3.1 compliance.

Assumptions:

- FEMA will prepare the Categorical Exclusion (CE) or an Environmental Assessment and Finding of No Significant Impact (FONSI). If additional support is needed, ESA can prepare NEPA related materials under a separate scope and budget.

- The City will pay all filing fees for the CEQA document.
- The City will handle distribution for the notices and the environmental documentation. ESA will advise the City regarding the distribution list for mailing.
- The scope of work does not include: preparation of a standalone biological assessment; protocol level surveys for biological resources; or a conformity determination pursuant to the Federal Clean Air Act.
- Assumes health risk will be conducted qualitatively and a noise survey would not be conducted.
- Project will not change substantially once technical investigations have been initiated. If Project changes require subsequent field work, substantial revisions to analyses, or revised modeling (e.g., for traffic, air quality, or greenhouse gas emissions investigations), additional effort will be required.
- For each review cycle, the City will consolidate comments from City staff and provide a single consolidated set of comments to ESA. The City will address conflicting comments from multiple reviewers or provide guidance to ESA on how to address them.
- All draft deliverables will be submitted electronically (Word and PDF).
- All draft documents will be submitted to the City for a minimum two-week review period, in MS Word and the City edits/comments and ESA responses will be provided using track changes and comment boxes.
- The City will coordinate and secure all Project site access for field work.
- ESA will produce Screen Check of IS/MND based on one (1) round of comments by the City on the Draft IS/MND
- Twenty (20) hours (including up to ten [10] hours for responses to comments on biological resources) will be sufficient for responding to comments.
- If requested, ESA could attend the Council certification hearing and assist in responding to any questions by the Council or the public under a supplemental scope and fee.
- Work will not be slowed or stopped by others outside ESA's control.
- Native American correspondence or coordination beyond that scoped in Task 2.2.1 will be conducted by the City.

## **2.3 Permit Applications**

### **2.3.1 Aquatic Resources Delineation**

ESA wetland specialists will conduct a preliminary aquatic resources delineation of the project area to determine the location and extent of potential jurisdictional waters of the U.S., including wetlands. ESA will conduct the delineation using the methods specified in the U.S. Army Corps of Engineers (USACE) *1987 Wetland Delineation Manual* and the *2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)*. The wetland delineation area will include any areas where ground disturbance and construction activities would occur and any potential staging and access areas. The delineation will include a map identifying potentially jurisdictional waters within the project boundaries and a report that will describe the environmental setting.

Expected limits of State jurisdictional waters [per Regional Water Quality Control Board (RWQCB) and California Department of Fish and Wildlife (CDFW) guidance], if different from the extent of USACE jurisdictional areas, will also be documented concurrently with the USACE delineation effort for use in

the RWQCB 401 Certification application (Task 2.3.8) and CDFW Streambed Alteration Agreement Notification (Task 2.3.9).

ESA will submit the delineation to the USACE for verification as part of the USACE permit application described in Subtask 2.3.4 below. ESA's wetland specialists will meet with the USACE at the project site for verification of potentially jurisdictional waters of the U.S. and will coordinate with the USACE to produce a verified map indicating the extent and location of potentially jurisdictional waters of the U.S.

Deliverables:

- Draft Aquatic Resources Delineation Report for City Review (electronic copy)
- Final Aquatic Resources Delineation Report for submittal to USACE (electronic copy)
- Revised Final Aquatic Resources Delineation Report following field verification (electronic copy)

### **2.3.2 Habitat Assessment**

ESA biologists will prepare a habitat assessment report to support permit applications and the biological resources section of the CEQA document. ESA will conduct a pre-field database and literature search for special-status species and sensitive natural communities that have been documented within or in the vicinity of the project site. The database and literature search shall include the California Natural Diversity Database (CNDDB), U.S. Fish and Wildlife Service (USFWS) species list, and California Native Plant Society (CNPS) Rare Plant Inventory. ESA biologists will then conduct a reconnaissance-level survey of the project site to document site conditions and identify potential habitat for special-status plant and animal species and sensitive natural communities at the project site. The report will include a description of vegetation communities and wildlife habitats within the project area, description of special-status species and sensitive natural communities that have potential to occur at the project site, and a habitat map.

Deliverables:

- Draft Habitat Assessment for City Review (electronic copy)
- Final Habitat Assessment (electronic copy)

### **2.3.3 Pre-application Agency Coordination**

Once the aquatic resources delineation, habitat assessment, and 30% design drawings have been prepared, ESA permitting specialists will schedule a pre-application meeting with the USACE and encourage attendance by the RWQCB, CDFW, U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS). This meeting will introduce the proposed project to the regulatory agency representatives and solicit their input on the project design and permitting assumptions. This will provide immediate feedback from the agencies and streamline the permitting process. ESA will prepare an interagency meeting request letter that will include a summary of the project description, description of the project site, reason for the project, and other pertinent information. ESA will prepare a brief PowerPoint presentation and meeting agenda in coordination with the City.

This task assumes two (2) one-hour conference calls- one to prepare for the meeting (before) and one to debrief from the meeting (after) along with the Interagency Meeting which will be conducted in person at

the USACE office in San Francisco. This task assumes that three ESA staff will attend the interagency meeting and the conference calls.

Deliverables:

- Draft Interagency Meeting Request for City Review (electronic copy)
- Final Interagency Meeting Request (electronic copy)
- Draft Interagency Meeting PowerPoint presentation (electronic copy)
- Final Interagency Meeting PowerPoint presentation (electronic copy)

#### **2.3.4 U.S. Army Corps of Engineers 404 Permit Application**

ESA anticipates that the project may qualify for approval under the Corps Nationwide Permit (NWP) 13 for Bank Stabilization and will prepare the USACE Clean Water Act (CWA) Section 404 permit application and supporting documents. The project will likely exceed the linear foot and volume of fill limits of this NWP and will require a waiver by the USACE's District Engineer. The District Engineer may waive the limits if the discharge will result in no more than minimal adverse environmental effects. If the USACE does not approve the project under a NWP, and an Individual Permit is required, ESA will prepare a separate scope and budget for this application. The permit application will include a detailed permitting project description, a discussion of the project's impacts on jurisdictional wetlands and waters, proposed avoidance, minimization, and mitigation measures, and supporting maps and/or graphics. The permitting project description will be based on the project description presented in the CEQA document prepared for the proposed project and will be refined with project updates and specific details required for permit applications.

The Aquatic Resources Delineation (Task 2.3.1), Cultural Resources Report (Task 2.3.5), USFWS Biological Assessment (Task 2.3.6), and NMFS Biological Assessment (Task 2.3.7) will be submitted with the permit application.

Deliverables:

- Draft USACE Section 404 Permit application for City Review (electronic copy)
- Final USACE Section 404 Permit application (electronic copy for City; electronic and hard copy for submittal to USACE)
- Hard copies of the following for submittal to USACE: Aquatic Resources Delineation Report (Task 2.3.1), Cultural Resources Report (Task 2.3.5), USFWS Biological Assessment (Task 2.3.6), NMFS Biological Assessment (Task 2.3.7)

#### **2.3.5 Section 106 Support**

Under this task ESA will support Project compliance with Section 106 of the National Historic Preservation Act (Section 106): development of an Area of Potential Effects (APE) map; archival review of cultural resources records; pedestrian and subsurface archaeological survey of the APE; Native American correspondence; and a cultural resources technical report.



ESA will coordinate with City to create a map that identifies the Project APE. Due to the location and nature of the Project, no indirect visual impacts to architectural resources are anticipated; therefore, ESA anticipates that the APE for direct and indirect effects will be the same.

Following approval of the APE by the City (and FEMA, if requested), ESA will conduct a records search at the Northwest Information Center (NWIC) of the California Historical Resources Information Center (CHRIS) to acquire documentation of previously recorded cultural resources and previous cultural resources studies conducted in and within ½ mile of the APE. The research will include a review of historic topographic maps and aerial photography, and will provide information regarding the potential sensitivity of the APE for cultural resources.

ESA will contact the Native American Heritage Commission (NAHC) to request information on any known sacred sites in the APE and to request a list of Native American representatives who may have an interest in the Project. ESA will draft letters for the City to send to each Native American representative provided in the NAHC response. The letters will include a brief Project description and map, language inviting the recipients to consult under Section 106, and a request that the recipients contact the City with any concerns regarding potential Project impacts to cultural resources. An ESA archaeologist will also assist the City in conducting one on-site visit with interested Native American representatives to review the Project setting and proposed Project elements. ESA will maintain documentation of Native American consultation activities. Any additional Native American correspondence or coordination with Native American representatives will be conducted by the City and FEMA.

ESA will conduct an archaeological pedestrian and subsurface survey of accessible areas of the APE. The survey, both the pedestrian and subsurface portion, will be led by a qualified archaeologist, defined as one meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology, and will also include participation by a tribal monitor. The pedestrian survey will consist of ESA archaeologists walking parallel transects, spaced at no greater than 10 meters, and inspecting the ground surface for evidence of archaeological material. The subsurface survey will consist of ESA archaeologists using hand tools (e.g., shovel, trowel) to excavate cylindrical shovel probes (SP[s]), measuring approximately 30 to 40 centimeters in diameter, and screening excavated sediment through ¼-inch wire mesh. SPs will extend to a maximum 100 centimeters below surface or the maximum estimated depth of ground disturbance at the location. A 4-inch-diameter hand soil auger will be used to excavate sediment from the base of each SP to a maximum 175 centimeters below surface; this sediment will also be screened through ¼-inch wire mesh. Excavation unit locations will be inspected by Underground Service Alert (USA) for underground utilities at least 48 hours in advance of work. Any archaeological material identified will be recorded (i.e., notes, photos, sketches) and its location documented with a sub-meter-accuracy GPS unit; however, no archaeological material will be collected. The location of each excavation unit will also be documented with a sub-meter-accuracy GPS unit. If human remains are encountered during the survey, the applicable procedures in California Health and Safety Code Section 7050.5 and California Public Resources Code Section 5097.98, will be followed. All excavation units will be backfilled upon completion. A maximum of 40 excavation units are proposed as part of the survey. This scope assumes that this task will require no more than four (4) days of fieldwork, at 10 hours/day, for two (2) archaeologists and one (1) tribal monitor.

ESA will prepare a Cultural Resources Survey Report (CRSR) in support of Phase 2 of the Project. The CRSR will document the methods and findings of the CHRIS records search, other archival research, archaeological survey, Native American coordination, and will include site records updates (California Department of Parks and Recreation 523 Forms) for any previously recorded cultural resources identified in the APE. ESA will submit one electronic draft copy of the CRSR to the City for review. ESA will prepare a final version of the CRSR, incorporating one round of comments, and provide one electronic copy of the final version, to the City and FEMA. ESA will provide a copy of the final CRSR, with site record updates, to the NWIC after FEMA approval of the document. This task does not include collection or laboratory analysis of any archaeological material, evaluation of resource eligibility for listing in the National Register of Historic Places or California Register of Historical Resources, or Finding of Effects documentation for the Project. This task assumes that no previously unrecorded cultural resources are in the APE.

Deliverables:

- Draft Cultural Resources Survey Report (electronic copy)
- Final Cultural Resources Survey Report (electronic copy)
- Draft Native American consultation letters

### **2.3.6 U.S. Fish and Wildlife Service Biological Assessment**

Based on preliminary review of the project area, there is potential for the federally endangered California freshwater shrimp to occur in the project area. ESA will prepare a Biological Assessment (BA) for use in conducting Section 7 consultation between the USACE (or FEMA) and the U.S. Fish and Wildlife Service (USFWS) under Section 7(c) of the federal Endangered Species Act (FESA; 16 U.S.C. §1536(c) and 50 CFR §402.12). The BA will use information from the habitat assessment (Task 2.3.2) and will address all federally listed species that may occur on the site, assess the potential for project impacts to these species, and include conservation measures to reduce impacts to these species. The BA will be submitted to the USACE and USFWS for Section 7 consultation as part of the Section 404 permit application.

Deliverables:

- Draft USFWS Biological Assessment for City Review (electronic copy)
- Final USFWS Biological Assessment for City Review (electronic copy)

### **2.3.7 National Marine Fisheries Biological Assessment**

ESA biologists will prepare a NMFS BA to support USACE (or FEMA) consultation with NMFS Section under 7(c) of the Endangered Species Act (16 U.S.C. §1536(c) and 50 CFR §402.12). An ESA fisheries biologist will conduct a reconnaissance-level survey of the site and will include information from the habitat assessment (Task 2.3.2) in the BA. The BA will evaluate project impacts on federally listed central California coast steelhead, which have potential to occur in the project area, and to central California coast steelhead critical habitat which occurs within the project area, and include conservation measures to reduce impacts to this species and its critical habitat. As part of the BA, ESA will also do an

assessment of potentially affected Essential Fish Habitat (EFH) regulated under the Magnuson-Stevens Fishery Conservation and Management Act.

Deliverables:

- Draft NMFS Biological Assessment for City Review (electronic copy)
- Final NMFS Biological Assessment for City Review (electronic copy)

**2.3.8 Regional Water Quality Control Board 401 Permit Application**

In accordance with CWA Section 401, the RWQCB must take certification action for projects that propose impacts to jurisdictional waters and wetlands subject to a permit issued by the USACE, to ensure the activity complies with state water quality standards. The RWQCB typically also conducts a concurrent review of projects under the Porter-Cologne Water Quality Control Act, which results in the issuance of Waste Discharge Requirements which are incorporated into the 401 Certification. To obtain certification for the proposed project, ESA will prepare the Section 401 Water Quality Certification / Waste Discharge Requirements Application Form and supporting documentation. The permit application will include a detailed permitting project description, a discussion of the project's impacts on jurisdictional wetlands and waters, proposed avoidance, minimization, and mitigation measures, and supporting maps and/or graphics.

Deliverables:

- Draft RWQCB Section 401 Permit application for City Review (electronic copy)
- Final RWQCB Section 401 Permit application (electronic copy for City; electronic and hard copy for submittal to RWQCB)
- Hard copies of the following for submittal to RWQCB: Aquatic Resources Delineation Report (Task 2.3.1), USACE Section 404 Permit application (Task 2.3.4)

**2.3.9 California Department of Fish and Wildlife Streambed Alteration Agreement Notification**

A Lake and Streambed Alteration Agreement (SAA) pursuant to Section 1602 of the California Fish and Game Code is required for projects that result in temporary or permanent alterations to all perennial, intermittent, and ephemeral rivers, streams, and lakes in the state. ESA will prepare a Section 1602 Notification of Lake and Streambed Alteration for submittal to CDFW. The Section 1602 Notification will describe the proposed project and potential project effects on fish or wildlife resources and will incorporate information from the Habitat Assessment and CEQA document prepared for the proposed project.

Deliverables:

- Draft Notification of Lake and Streambed Alteration for City Review (electronic copy)
- Final Notification of Lake and Streambed Alteration (electronic copy for City; electronic and hard copy for submittal to CDFW). The submittal would also include one hard copy of the Habitat Assessment (Task 2.3.2) for submittal to CDFW

### **2.3.10 California Department of Fish and Wildlife 2080.1 Consistency Determination Confirmation**

The state listed California freshwater shrimp has potential to occur within the project area. California freshwater shrimp is a state-listed species that is also listed under FESA, The California Endangered Species Act (CESA) allows for Consistency Determinations with federal incidental take statements (Section 7 consultation) under Fish and Game Code Section 2080.1. ESA will prepare a request for a consistency determination and submit the request with the FESA incidental take statement or permit to CDFW. This scope assumes that the City will provide a description of the financial assurances for any mitigation to include with the Consistency Determination request.

If an Incidental Take Permit under Section 2081 of CESA is required, ESA can prepare a separate scope and budget for this work at the request of the City. Deliverables:

- Draft CDFW Consistency Determination Request (electronic copy)
- Final CDFW Consistency Determination Request (electronic copy for City; electronic and hard copy for submittal to CDFW)

#### Assumptions:

- Budget assumes that the project limits will be as shown in the Figure 7: Alternative 2 Project Elements in the Project's Engineering Report and the staging area limits will be as shown in the Calistoga WWTP Figure in the Updated Project Budget Phases and Milestone Schedule Letter dated October 19, 2016. If the project limits change a revised budget may be required.
- The existing water treatment ponds and existing pipeline (where ditch improvements would occur) are not considered jurisdictional by the USACE or RWQCB.
- If the USACE determines that the project does not qualify for approval under a NWP, and an Individual Permit is required, ESA can prepare a separate scope and budget for this effort.
- The City will lead coordination with the State Lands Commission (SLC) and will be responsible for confirming that a State Lands Use Lease Permit is not required.
- If an Incidental Take Permit under Section 2081 of CESA is required, ESA will prepare a separate scope and budget for this work upon request from the City.
- The City will provide ESA with the funding source information for the CDFW Consistency Determination.
- This scope and budget does not include preparation of a Mitigation and Monitoring Plan. ESA will prepare a separate scope and budget to prepare this plan once agency consultation clarifies potential permit conditions upon request from the City.
- ESA staff have access to the entire project area including staging and access areas.
- The City will be responsible for any fees associated with the regulatory permits.
- It is assumed that there will only be one (1) review of the draft reports by City and the City will provide one (1) set of consolidated comments on draft reports.
- This scope does not include any agency coordination or follow-up after application submittal and does not include permit acquisition. It is assumed that agency coordination and follow-up to procure

regulatory approvals will occur under a separate scope and budget as part of Phase 2. ESA will prepare a separate scope and budget for this effort upon request from the City.

- A State Lands Commission Land Use Lease or Land Use Amendment is not required.
- No previously unrecorded cultural resources will be identified during archaeological survey.
- No National Register- or California Register-eligibility evaluations for resources are included.
- One (1) on-site meeting with City, FEMA, and Native American representatives, to last no more than 4 hours.
- Archaeological survey will require no more than 40 excavation units.
- Archaeological survey will require no more than four (4) 10-hour days, for two (2) archaeologists and one (1) tribal monitor.
- No access issues or utilities constraints exist for the APE and City will coordinate access for fieldwork.
- ESA will provide the tribal monitor, likely from the Mishewal Wappo Tribe of the Alexander Valley, as a subcontractor, at a standard labor cost of \$65/hour.

### **TASK 3. Design Development (ESA, Kennedy/Jenks, Telestar)**

The ESA team will progress the preferred alternative (Alternative 2) through draft 50% (Subtask 3.1) and final 50% (Subtask 3.2) design and produce a basis of design report for Phase 1 of this project. The preferred alternative, Alternative 2, described in the City of Calistoga Riverside Ponds and Headworks, River Bank Repair Project Engineering Report, (Kennedy/Jenks Consultants, 2016) and presented in Figure 7. The design development deliverables will contain sufficient detail to support CEQA analysis and compliance, prepare permit applications and serve as the basis for final design under Phase 2 of the project.

The ESA team, which includes Kennedy/Jenks Consultants and Telestar, will develop the following project elements:

#### Abandon Riverside Ponds 1, 2 and 3

- Remove and salvage aeration blowers and sprayers for reuse in Pond 4
- Abandon riverside Ponds 1, 2, and 3 through minor grading. Consultation with project biologists and project team will guide the habitat design elements to be most beneficial to the project.
- Plant native riparian and upland plants in the abandoned ponds and along the banks of the Napa River at select locations

#### Riverside Pond 4 Improvements

- Install new 14-inch force main from the 20 MG Pond to the headworks
- Raise Pond 4 berms to increase storage capacity (to approximately 1.8 million gallons) and be above the 100-year water surface elevation.
- Install new HDPE pond lining

- Install new instrumentation and equipment for enhanced treatment including new and/or relocated aerators and baffles
- Install new 18-inch gravity outfall from Pond 4 to existing outfall at Pond 1 and new automated control valve and flow meter
- Install SCADA system and associated control system for pond discharge, coordinated with Napa River flows
- Lay electrical and control conduits
- Install THM sampling station
- Stabilize the bank on the Oat Hill Mine Ditch that runs along the edge of Pond 4

#### Napa River and Simmons Creek Bank Protection and Drainage Ditch Improvements

- Grading, reconstruction and biotechnical stabilization of banks of Simmons Creek in vicinity of the headworks
- Construct new drainage ditch from Pond 4 to Simmons Creek to segregate stormwater from wastewater effluent
- Stabilize the north bank of the Napa River between Ponds 1 and 2
- Analyze hydrology and hydraulics of Simmons Creek and the Napa River for design purposes (2-yr through 50-yr recurrence interval). Analysis generated from Task 2.1 will be supplemented in this task.

In addition, under this task ESA will evaluate the potential expansion of the Pond 4 footprint for operational flexibility and function as well as the need for grade control on Simmons Creek at the confluence with the Napa River. ESA will provide design submittals at the draft 50% and final 50%-completion levels for review and comment by the City. Each submittal will include drawings, technical specifications outline and cost estimates developed to appropriate levels of completion. In addition, ESA and Kennedy/Jenks will develop a brief memorandum that documents the basis of design for the design elements. Comments received on the draft 50% design deliverables will be incorporated into the final 50% design submittal. Comments on and revisions to the final 50% design deliverable will be picked up and progressed for the 90% design under Phase 2.

For budgeting purposes, we have assumed that design drawings will consist of the following provisional sheet list:

<b>Title</b>	<b># of Sheets</b>	<b>Lead</b>
Title Sheet, General Notes, Vicinity & Location Maps, Abbreviations, Legend, List of Drawings	2	ESA
Site Plan, including staging area and access routes	2	ESA
Demolition Plan	1	K/J
Grading Plan	3	ESA

Grading Improvement Plan	3	ESA
Utility Plans	9	K/J
Utility Details	6	K/J
Grading Sections	3	ESA
Grading Details	2	ESA
Grading Improvement Details	3	ESA
Revegetation (not included under 50% design)	n/a	ESA
Revegetation Plant List	1	ESA
Electrical Controls	8	K/J
Estimated Total:	43	

The actual list of drawings will be refined as the design develops.

We anticipate and have budgeted for the following activities to complete the scope of work:

- Project management and quality control – our project manager will coordinate and monitor project schedule, budget, and work products with project team members and the City, submit invoices, and conduct internal quality control prior to submittal of deliverables.
- Project meetings – we have budgeted for one (1) on-site kickoff meeting with the City and key team members, up to four (4) 1-hour telephone progress meetings (including preparation) with key team members, two (2) telephone meetings to review comments on the draft 50% and final 50% design submittals.
- Site visits – we have budgeted for two (2) site visits to review site conditions and evaluate preliminary design assumptions and to refine the design based on calculations and field conditions.
- Design development – as outlined in the scope above, including hydrologic and hydraulic modeling, design calculations, and development of a basis of design document to support the design decisions, and production of draft 50% and final 50% design submittals that will include drawings, opinion of probable construction costs, and a list of technical specification sections.

#### Deliverables:

- Draft 50%-complete Design (plans, outline of technical specifications, construction cost estimate)
- Final 50%-complete Design (plans, outline of technical specifications, construction cost estimate)
- Basis of Design Memorandum

#### Assumptions:

We assume following elements/services are not needed/not included/will be provided by others:

- Special handling of excavated soils due to chemical concentrations
- Utility locating and utility relocations
- Preparation of Division 0 and 1 documents (Instructions to Bidders, Contract, General Conditions, General Requirements, etc.)
- We will incorporate one (1) set of consolidated comments from the draft 50% design submittal into the final 50% design submittal. City comments on the 50% submittal will be reviewed during Phase 1 and will be incorporated during final design (Phase 2).

## Phase 1 Fee

The accompanying fee estimate breaks down our effort by task and staff member based on our 2018 Fee Schedule – Exhibit B. Actual disbursement of the project budget may vary from that proposed based on actual project needs. Staff time has been allocated within each task for quality control and project management.

We propose to bill this project on a time-and-materials basis with a not-to-exceed budget of \$475,000.

<b>Task</b>	<b>Description</b>	<b>Estimated Fee</b>
1	Field Investigations	\$78,810
2	Permitting & Compliance	\$250,190
3	Design Development (50% Design)	\$140,600
--	Expenses	\$5,400
	Total:	\$475,000

## Phase 1 Schedule

We understand that this project has a target completion date of December 2019 established by the FEMA HMP grant (#4240-20-27R). This completion date is feasible, assuming that work begins in September 2018. We propose the following schedule located in the attached Table 1 – Project Schedule.



**Table 1: Calistoga Riverside Ponds - Preliminary Project Schedule**

[illegible]

**EXHIBIT B**

**Other Consultants, Specialists or Experts Employed by Design Professional**

**Doble Thomas – Topographic Survey**

**A3Geo – Geotechnical Analysis**

**Kennedy/Jenks – Civil/Mechanical Design Services**

**Telstar – Electrical/Telemetry Design Services**



## Exhibit B

### Environmental Science Associates & Subsidiaries 2018 Modified Schedule of Fees

#### I. Personnel Category Rates

Charges will be made at the Category hourly rates set forth below for time spent on project management, consultation or meetings related to the project, field work, report preparation and review, travel time, etc. Time spent on projects in litigation, in depositions and providing expert testimony will be charged at the Category rate times 1.5.

Labor Category	Level I	Level II	Level III
Senior Director	220	235	250
Director	190	210	220
Managing Associate	175	180	190
Senior Associate	150	150	160
Associate	105	125	135
Project Technicians	85	90	95

- (a) The range of rates shown for each staff category reflects ESA staff qualifications, expertise and experience levels. These rate ranges allow our project managers to assemble the best project teams to meet the unique project requirements and client expectations for each opportunity.
- (b) From time to time, ESA retains outside professional and technical labor on a temporary basis to meet peak workload demands. Such contract labor may be charged at regular Employee Category rates.
- (c) ESA reserves the right to revise the Personnel Category Rates annually to reflect changes in its operating costs.

#### II. ESA Expenses

##### A. Travel Expenses

- 1. Transportation
  - a. Company vehicle – IRS mileage reimbursement rate
  - b. Common carrier or car rental – actual multiplied by 1.10
- 2. Lodging, meals and related travel expenses – direct expenses multiplied by 1.10

##### B. Communications and Project Support Fee

Non-travel expenses incurred for the duration of the agreement for project support but not itemized below, including document retention, delivery and communications. Project labor charges multiplied by 3%.



### C. Printing/Reproduction Rates

Item	Rate/Page	Sample Pricing
Black & White – 8.5 x 11	\$0.10	
Black & White – 11 x 17	\$0.20	
Color – 8.5 x 11	\$0.40	
Color – 11 x 17	\$0.70	
B&W – Plotter (Toner – ECO Quality)	\$0.40/sf	24x36 B/W CAD drawing would cost \$2.40 per sheet
B&W – Plotter (Toner – Presentation Quality)	\$1.00/sf	24x36 B/W CAD drawing would cost \$6.00 per sheet
Color – Plotter (Inkjet – ECO Quality)	\$2.00/sf	24x36 Color Drawing would cost \$12 per sheet
Color – Plotter (Inkjet – Presentation Quality)	\$4.00/sf	24x36 Color Drawing would cost \$24 per sheet
CD	\$10.00	
Digital Photography	\$20.00 (up to 50 images)	
All Other Items (including bindings and covers)	At cost plus 10%	

### D. Equipment Rates

Item	Rate/Day	Rate/Week	Rate/Month
<b>Project Specific Equipment:</b>			
Vehicles – Standard size	\$ 40 <sup>a</sup>	\$ 180	
Vehicles – 4x4 /Truck	85		
Vehicles – ATV	125		
Noise Meter	100		
Hydroacoustic Noise Monitoring Equipment	150		
Electrofischer	300	1,200	
Sample Pump	25		
Field Traps	40		
Digital Hypsometer (Nikon)	20		
Stillling Well / Coring Pipe (3 inch aluminum)	3/ft		
Backpack Sprayer	25		
Beach Seine	50		
Otter Trawl	100		
Wildlife Acoustics Bat Detector	125	400	
Wildlife Trail Camera	30	100	
Fiber Optic Endoscope	125	500	
Spot Light	30		
Spotting Scope	50	200	
<b>Topographic Survey Equipment:</b>			
Auto Level	40		
Total Station	200	600	
DJI Quad Drone	300	1,200	
RTK-GPS	300	1,200	
RTK-GPS Smartnet Subscription	50	200	
Trimble GPS	75	350	900
iPad/Android Tablet + 1m GNSS External Sensor (Trimble R1, Bad Elf)	75	350	900
iPad/Android Tablet only (includes Garmin Glo external sensor)	50	225	600
Laser Level	60		
Garmin GPS or equivalent	25		250



Item	Rate/Day	Rate/Week	Rate/Month
<b>Hydrologic Data Collection, Water Current, Level and Wave Measurement Equipment:</b>			
ISCO 2150 Area Velocity Flow Logger	\$ 25	\$ 100	\$ 350
Logging Rain Gage	10	40	125
Marsh-McBirney Hand-Held Current Meter	50	200	
FloWav Surface Velocity Radar	50	200	
Logging Water Level - Pressure Transducer	10	30	100
Logging Barometric Pressure Logger	5	15	50
Well Probe / Water Level Meter	20	80	
Bottom-Mounted Tripod / Mooring	25	100	400
Handheld Suspended Sediment Sampler	20		250
<b>Water Quality Equipment:</b>			
Logging Turbidimeter/Water Level Recorder	\$ 25	\$ 100	\$ 400
Logging Conductivity/Water Level Recorder	20	60	200
In-Situ Troll 9500 logging water quality multiprobe		200	800
Logging Temperature Probe	3	10	40
Hach Hand-Held Turbidimeter Recording Conductivity Meter w/Datalogger	50	200	
Refractometer	20	80	
YSI Hand-Held Salinity Meter or pH meter	30	120	
Hand-Held Conductivity/Dissolved Oxygen Probe (YSI 85)	40	160	
HOB0 Salinity Gauge			125
Water Quality Sonde			800
YSI 650 with 6920 Multi Probe	180	500	1500
ISCO 6712 Portable Sampler w/ISCO 2105 Module	40	250	900
<b>Sedimentation / Geotechnical Equipment:</b>			
Peat Corer	\$ 75	\$ 300	
60lb Helly-Smith Bedload Sampler with Bridge Crane	175	700	
Suspended Sediment Sampler with Bridge Crane	75	300	
Guelph Permeameter	50	200	
Vibra-core	100	400	
Shear Strength Vane	50	200	
Auger (brass core @ \$ 5/each)	20	80	
<b>Boats:</b>			
14' Aluminum Boats with 15 HP Outboard Motor	\$ 100	\$ 400	
Single or Double Person Canoe/Kayak	30	120	
20' Lowe Boat w/115 HP Outboard	300	1,500	
17' Boston Whaler w/ 90 HP Outboard	300	1,500	

<sup>a</sup> Actual project charges will be either the IRS mileage reimbursement rate or the daily rate, whichever is higher.

### III. Subcontracts

Subcontract services will be invoiced at cost multiplied by 1.10.

### IV. Other

The fees above do not include sales tax. Any applicable or potential sales tax will be charged when appropriate.

### V. Payment Terms

Unless otherwise agreed in writing, ESA will submit invoices on a monthly basis. Any unpaid balances shall draw interest at one and one half percent (1.5%) per month or the highest rate allowed by law, whichever is lower, commencing thirty (30) days after date of invoice. All invoices not contested in writing within fifteen (15) business days of receipt are deemed accepted by Client as true and accurate and Client thereafter waives any objection to Clients invoices, which are payable in full.

EXHIBIT C

Insurance Requirements to Agreement for Professional Services  
Re: Riverside Ponds Phase I Project

Design Professional shall, at all times it is performing services under this Agreement, provide and maintain insurance in the following types and with limits in conformance with the requirements set forth below. Design Professional will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Design Professional agrees to amend, supplement or endorse the existing coverage to do so. Design Professional acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Design Professional in excess of the limits and coverage required in this agreement and that is applicable to a given loss will be available to City.

1. Commercial General Liability Insurance, occurrence form, using Insurance Services Office ("ISO") "Commercial General Liability" policy form CG 00 01 or an approved equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review, but in no event shall be less than \$2,000,000 each occurrence;

2. Business Auto Coverage on ISO Business Automobile Coverage form CA 00 01 including symbol 1 (Any Auto) or an approved equivalent. Limits are subject to review, but in no event shall be less than \$1,000,000 each occurrence. If Design Professional or its employees will use personal autos in any way in connection with performance of the Services, Design Professional shall provide evidence of personal auto liability coverage for each such person.

3. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employers' liability insurance, with minimum limits of \$1 million per occurrence.

4. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by insured first. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Design Professional, subconsultants or others involved in performance of the Services. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,000,000 per occurrence.

5. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Design Professional and "Covered Professional Services" as designated in the policy must include the type of work performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate.

6. Insurance procured pursuant to these requirements shall be written by insurers that are authorized to transact the relevant type of insurance business in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

7. General conditions pertaining to provision of insurance coverage by Design Professional. Design Professional and City agree to the following with respect to insurance provided by Design Professional:

A. Design Professional agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992, or an equivalent. Design Professional also agrees to require all contractors, and subcontractors to do likewise

B. No liability insurance coverage provided to comply with this Agreement, except the Business Auto Coverage policy, shall prohibit Design Professional, or Design Professional's employees, or agents, from waiving the right of subrogation prior to a loss. Design Professional agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

C. All insurance coverage and limits provided by Design Professional and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

D. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

E. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

F. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises, and City shall be responsible for the cost of any additional insurance required. Design Professional shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

G. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Design Professional's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City may terminate this agreement in accordance with Section 19 of the Agreement.

H. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Design Professional agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

I. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Design Professional or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to City.

J. Design Professional agrees to ensure that subconsultants, and any other party involved with the Services who is brought onto or involved in the Services by Design Professional, provide the same minimum insurance coverage required of Design Professional; provided, however that only subconsultants performing professional services will be required to provide professional liability insurance. Design Professional agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Design Professional agrees that upon request, all agreements with subcontractors and others engaged in the Services will be submitted to City for review.

K. Design Professional agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, architect, consultant or other entity or person in any way involved in the performance of work on the Services contemplated by this agreement to self-insure its obligations to City. If Design Professional's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Design Professional, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

L. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Design Professional ninety (90) days advance written notice of such change. If such change results in additional cost to the Design Professional, and the City requires Design Professional to obtain the additional coverage, the City will pay Design Professional the additional cost of the insurance.



M. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

N. Design Professional acknowledges and agrees that any actual or alleged failure on the part of City to inform Design Professional of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

O. Design Professional will endeavor to renew the required coverages for a minimum of three years following completion of the Services or termination of this agreement and, if Design Professional is unable to do so, Design Professional will notify City at least thirty days prior to the cancellation or expiration of the policy or policies.

P. Design Professional shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Design Professional's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

Q. The provisions of any workers' compensation or similar act will not limit the obligations of Design Professional under this agreement. Design Professional expressly agrees that any statutory immunity defenses under such laws do not apply with respect to City, its employees, officials and agents.

R. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

S. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

T. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

U. Design Professional agrees to be responsible for ensuring that no contract entered into by Design Professional in connection with the Services authorizes, or purports to authorize, any third party to charge City an amount in excess of the fee set forth in the agreement on account of insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

V. Design Professional agrees to provide immediate notice to City of any claim or loss against Design Professional arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

## EXHIBIT B

### Other Consultants, Specialists or Experts Employed by Design Professional

Doble Thomas – Topographic Survey

A3Geo – Geotechnical Analysis

Kennedy/Jenks – Civil/Mechanical Design Services

Telstar – Electrical/Telemetry Design Services

EXHIBIT C

Insurance Requirements to Agreement for Professional Services  
Re: Riverside Ponds Phase I Project

Design Professional shall, at all times it is performing services under this Agreement, provide and maintain insurance in the following types and with limits in conformance with the requirements set forth below. Design Professional will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Design Professional agrees to amend, supplement or endorse the existing coverage to do so. Design Professional acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Design Professional in excess of the limits and coverage required in this agreement and that is applicable to a given loss will be available to City.

1. Commercial General Liability Insurance, occurrence form, using Insurance Services Office ("ISO") "Commercial General Liability" policy form CG 00 01 or an approved equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review, but in no event shall be less than \$2,000,000 each occurrence;
2. Business Auto Coverage on ISO Business Automobile Coverage form CA 00 01 including symbol 1 (Any Auto) or an approved equivalent. Limits are subject to review, but in no event shall be less than \$1,000,000 each occurrence. If Design Professional or its employees will use personal autos in any way in connection with performance of the Services, Design Professional shall provide evidence of personal auto liability coverage for each such person.
3. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employers' liability insurance, with minimum limits of \$1 million per occurrence.
4. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by insured first. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Design Professional, subconsultants or others involved in performance of the Services. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,000,000 per occurrence.

5. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Design Professional and "Covered Professional Services" as designated in the policy must include the type of work performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate.

6. Insurance procured pursuant to these requirements shall be written by insurers that are authorized to transact the relevant type of insurance business in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

7. General conditions pertaining to provision of insurance coverage by Design Professional. Design Professional and City agree to the following with respect to insurance provided by Design Professional:

A. Design Professional agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992, or an equivalent. Design Professional also agrees to require all contractors, and subcontractors to do likewise

B. No liability insurance coverage provided to comply with this Agreement, except the Business Auto Coverage policy, shall prohibit Design Professional, or Design Professional's employees, or agents, from waiving the right of subrogation prior to a loss. Design Professional agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

C. All insurance coverage and limits provided by Design Professional and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

D. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

E. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

F. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises, and City shall be responsible for the cost of any additional insurance required. Design Professional shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

G. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Design Professional's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City may terminate this agreement in accordance with Section 19 of the Agreement.

H. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Design Professional agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

I. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Design Professional or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to City.

J. Design Professional agrees to ensure that subconsultants, and any other party involved with the Services who is brought onto or involved in the Services by Design Professional, provide the same minimum insurance coverage required of Design Professional; provided, however that only subconsultants performing professional services will be required to provide professional liability insurance. Design Professional agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Design Professional agrees that upon request, all agreements with subcontractors and others engaged in the Services will be submitted to City for review.

K. Design Professional agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, architect, consultant or other entity or person in any way involved in the performance of work on the Services contemplated by this agreement to self-insure its obligations to City. If Design Professional's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Design Professional, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

L. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Design Professional ninety (90) days advance written notice of such change. If such change results in additional cost to the Design Professional, and the City requires Design Professional to obtain the additional coverage, the City will pay Design Professional the additional cost of the insurance.

M. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

N. Design Professional acknowledges and agrees that any actual or alleged failure on the part of City to inform Design Professional of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

O. Design Professional will endeavor to renew the required coverages for a minimum of three years following completion of the Services or termination of this agreement and, if Design Professional is unable to do so, Design Professional will notify City at least thirty days prior to the cancellation or expiration of the policy or policies.

P. Design Professional shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Design Professional's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

Q. The provisions of any workers' compensation or similar act will not limit the obligations of Design Professional under this agreement. Design Professional expressly agrees that any statutory immunity defenses under such laws do not apply with respect to City, its employees, officials and agents.

R. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

S. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

T. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

U. Design Professional agrees to be responsible for ensuring that no contract entered into by Design Professional in connection with the Services authorizes, or purports to authorize, any third party to charge City an amount in excess of the fee set forth in the agreement on account of insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

V. Design Professional agrees to provide immediate notice to City of any claim or loss against Design Professional arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.



**AGREEMENT RELATING TO NUISANCE VIOLATIONS  
AT 1207 FOOTHILL BOULEVARD, CALISTOGA, CA**

This Agreement relating to nuisance violations (hereinafter referred to as the “Agreement”) is made by and between the City of Calistoga (“CITY”) and Charles Davis (“Davis”) and Bob Beck (“Beck”) on this 28<sup>th</sup> day of September, 2018 (“Effective Date”). The City, Davis and Beck shall be referred to herein as the “parties” or each as a “party.”

This Agreement is made with regard to the following recitals:

WHEREAS, Beck currently owns property located at 1207 Foothill Boulevard, Calistoga, California, Assessor’s Parcel Number 011-310-007-000 (“Property”); and

WHEREAS, Davis leases the Property for use as a commercial business identified as Buster’s Barbecue and Bakery (“Buster’s”); and

WHEREAS, beginning in early 2018, improvements began at Buster’s to provide a shade arbor for music events to take place on the Property. Buster’s sought and was issued a building permit (“Permit B 16-99”) to construct an open structure with 12-foot tall steel supports, with a metal mesh rooftop cover. Due to the non-substantial size and design of the structure as indicated in the permit application, no design review was required by the Calistoga Municipal Code (“CMC”) Chapter 17.41 and the approved plans were in conformance with the maximum building height allowed by the Calistoga Municipal Code (“CMC”) in the Commercial Zoning District; and

WHEREAS, the structure was constructed in such a manner that did not comply with any approved building or engineering plans. The installed supports were approximately 28 feet tall instead of 12 feet, solid corrugated steel was used for the rooftop instead of a mesh rooftop cover, and it was enclosed by a cement block wall faced with rock veneer, including a section that functioned as a retaining wall, which was not identified in the plans. Davis deviated from the approved plans by adding a retaining wall that increased the front half of the structure’s height above 15 feet; and

WHEREAS, due to the lack of compliance with the approved building permit and serious concerns to the health and safety as a result of the deviations from Permit B 16-99, the City issued a Correction Notice on September 5, 2018 and a Stop Work Order on September 7, 2018, as the construction project was deemed to violate the City’s Zoning Code, Building Code, Fire Code, Health and Safety Code and Administrative Code; and

WHEREAS, on September 11, 2018, the City issued a Notice of Violation for violations of CMC 15.08.010 (Work exceeding scope of Permit B 16-99), CMC 17.41.020.B.3.a (Design Review approval required), California Building Code 107.4 (No changes from approved plans), and California Fire Code 109.1 (Unlawful acts), 110.1 (Unsafe buildings), 110.1.2 (Structural hazard), 110.4 (Abatement). A copy of the Notice of Violation is attached hereto and incorporated by reference as Exhibit A; and

WHEREAS, the Notice of Violation required that all commercial operations at Buster’s cease until the arbor structure is removed, that the arbor roof be removed within 24 hours of

receipt of the Notice of Violation and that the entire remaining arbor structure be demolished and removed by September 14, 2018; and

WHEREAS, the City also issued an Administrative Citation on September 11, 2018 for the violations pursuant to CMC sections 1.28.040 and 1.28.050(C). The fine for Day 1 is \$100, for Day 2 is \$200 and for Day 3 and each day thereafter is \$500; and

WHEREAS, Davis filed an appeal notice with the City on September 13, 2018, appealing the determination that the entire arbor structure needed to be removed and other issues. Davis contends in his appeal that the City approved the deviation of the arbor structure in the field. A copy of that appeal notice is attached hereto and incorporated by reference as Exhibit B; and

WHEREAS, Davis subsequently received a Memo Letter and revised structural plans dated September 25, 2018 (Memo Letter and Revised Plans) from MKM and Associates Structural Engineering (MKM), the structural engineers retained by Davis for the arbor structure project. The Memo Letter indicated that in order for the structure to conform to the California Building Code minimum requirements, the following changes were required: 1) the arbor support poles need to be reduced to 12'-0" maximum to match the height originally specified on the original design drawings; 2) the CMU block wall, with adhered stone on both sides, needs to be reduced to 5'-6" maximum in height, as measured from the performance platform's concrete slab, and to 9'0" maximum in height as measured from the existing parking lot pavement at the base of the wall to the top of the wall, and 3) the adhered stone on the CMU block wall needs to be secured with threaded rods at 24" on center. A true and correct copy of the MKM Memo Letter and Revised Plans is attached hereto and hereinafter incorporated as Exhibit C; and

WHEREAS, the Revised Plans depict a height of the overall arbor structure of 16'-3", measured at its tallest point. The City Building Official and MKM are satisfied that this is an acceptable height for the arbor structure in terms of building code compliance. However, the maximum height that is allowed for an accessory structure is 15 feet above natural grade in the Downtown Commercial Zoning District, pursuant to CMC 17.21.050(F)(1)(b); and

WHEREAS, in order for the arbor structure to remain at 16'-3", Davis will need to obtain a variance pursuant to Title 17, Chapter 17.42 of the CMC; and

WHEREAS, Davis now desires to withdraw his appeal with the City and cause the arbor structure to conform to the revisions identified by MKM in their Memo Letter and Revised Plans and the provisions of the CMC, and City desires to resolve the outstanding violations and administrative citations in a manner that ensures the safety of the Property and future compliance with the CMC.

NOW THEREFORE, based on and in consideration of the mutual promises contained herein and the recitals set forth above and incorporated in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereby agree as follows:

1. **RECITALS.** The aforementioned recitals are true and correct.

2. **INTENT.** The parties wish to avoid the burden and expense of further code enforcement, litigation and collection actions and accordingly have determined to compromise and settle their differences in accordance with the provisions of this Agreement. The City's further intent is to ensure compliance with the CMC and prevent future code violations and if any do occur in the future relating to the arbor structure, to provide a method for quick and immediate abatement of those violations.

3. **OBLIGATIONS OF DAVIS AND BECK.**

A. **Within FIVE (5) calendar days** of the Effective Date of this Agreement, Davis shall fulfill all of the following obligations:

(1) Davis shall reduce the height of all arbor poles to a maximum of 12 feet to conform to the Memo Letter and Revised Plans.

(2) Davis shall cause the CMU block wall with adhered stone, which was not part of the approved plans, to conform to the Memo Letter and Revised Plans and to be reduced to 5'-6" maximum in height, as measured from the performance platform's concrete slab, and to 9'0" maximum in height as measured from the existing parking lot pavement at the base of the wall, plus 6 inches, to the top of the wall. Guardrails for the arbor structure may be required by City.

(3) Davis shall cause the adhered stone on the CMU block wall to be secured with threaded rods at 24" on center.

(4) Davis shall secure inspections by a qualified special inspector for the arbor roof welds, the wall's threaded rods and the epoxied all thread bolts.

B. Davis may resume commercial operations of Buster's following completion of items identified in Section 3(A)(1-4), identified above, and a successful inspection of the construction in accordance with the Revised Plans by City Officials.

C. **Within TEN (10) calendar days** of the Effective Date of this Agreement, Davis shall fulfill all of the following obligations:

(1) Davis shall pay all outstanding Administrative Citations issued (9/11/18 through Effective Date) equal to \$8,300.00.

(2) Davis shall pay all costs associated with code enforcement actions, including the City's attorneys' fees, equal to \$6,009.

(3) Davis shall pay all review costs incurred by the City related to with Interwest Consulting Group, Inc.'s plan check of the Revised Plans.

(4) Davis shall apply to the City Planning Commission for a variance to allow the arbor structure to remain, in conformance with the Memo Letter and Revised Plans at a maximum height of 16'-3". If the City's Planning Commission denies the variance, then Davis shall alter the arbor structure to conform to the maximum height of the CMC within thirty (30) days of the Planning Commission's decision or some other time provided by the Planning Commission. This Agreement shall in no way be construed as an approval or guarantee of approval of the variance by the Planning Commission.

(5) Davis shall withdraw his appeal of the Notice of Violation.

D. Davis shall make the Property available for inspections to determine compliance with all provisions of the CMC during business hours and shall not commit any further violations of the CMC not addressed in the Notice of Violation, relating to the arbor structure, after the Effective Date of this Agreement and shall comply with all provisions of the CMC in the future. Davis agrees further that if any violations occur after the Effective Date of this Agreement, relating to the arbor structure on the Property, the City may immediately proceed to abate the nuisance pursuant to the Emergency Abatement process identified in CMC 1.12.170(A) and Davis expressly agrees that no notice of abatement will need to be provided prior to the City's abatement of the nuisance.

E. Davis shall be responsible for, and the City may enforce, any new violations relating to the arbor structure, not previously identified in the Notice of Violation, in the manner described in Paragraph D.

F. Beck shall monitor the Property to ensure that the Property complies with the CMC.

#### **4. OBLIGATIONS OF CITY.**

A. City will continue to monitor and inspect the Property to ensure that the arbor structure is re-constructed in a safe manner and in conformance with Permit B 16-99 and the Memo Letter and Revised Plans.

B. City shall make reasonable efforts to conduct any necessary inspections of the Property and process any review of the revised plans and structural calculations, as required in section 3(D), in a timely manner.

C. City shall dismiss the outstanding citations upon receipt of payment required by Section 3(C).

D. Upon receipt of a completed application from Davis for the variance required pursuant to section 3(A), the City shall promptly schedule the item for consideration with the Planning Commission.

**6. TERMINATION.**

A. This Agreement shall terminate upon the failure of Davis to satisfy any of the obligations stated herein. If this Agreement is terminated prior to the abatement of all of the violations identified in the Notice of Violation, the City may immediately proceed to abate any nuisances pursuant to the Emergency Abatement process identified in CMC 1.12.170 (A) and Davis expressly agrees that no notice of abatement will need to be provided prior to the City's abatement of the nuisance.

**7. LIMITED RELEASE BY CITY.**

A. The City agrees that it will not institute, initiate or continue any enforcement or legal action with regard to the violations relating to the arbor structure on the Property.

B. If Davis fails to meet his obligations as set forth herein, the City may proceed with an action to enforce this Agreement and/or to abate the resulting nuisance conditions on the Property against either or both Davis and Beck.

C. Notwithstanding this Agreement, the City does not give up any right to pursue remedies for other Municipal Code violations that exist on the Property in the future.

**8. LIMITED RELEASE BY DAVIS AND INDEMNITY.**

A. Davis, on behalf of himself, his heirs, agents, representatives, attorneys, and assigns hereby fully releases and discharges the City and the City's agents, representatives, attorneys, and assigns, fully and finally, from any and all rights, claims, demands, liens, disputes, actions, or causes of action which Davis and his agents, representatives, attorneys, and assigns now have against the City, whether claimed, contingent or actual, known or unknown, and of whatever kind or nature arising out of the enforcement of the Calistoga Municipal Code with respect to the arbor structure on the Property.

B. Davis shall hold the City, its agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities, judgments or damages from every cause, including but not limited to injury to person or property or wrongful death, including reasonable costs and expenses of defense of any judicial or administrative action, arising directly or indirectly out of the design, construction, demolition or maintenance of the arbor structure.

**9. BENEFIT AND BURDEN.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and permissible assigns.

**10. TIME IS OF THE ESSENCE.** Time is hereby expressly made of the essence in this Agreement and all performances and obligations due hereunder.

**11. BREACH.** In the event that any party breaches an obligation set forth in this Agreement, the other party shall give written notice of the breach and allow the breaching party

FIVE (5) business days to cure the breach. In the event that the breach is not cured, the affected party may bring any appropriate legal action to remedy the breach or any other legal action to effectuate the purpose of this Agreement.

**12. NOTICE.** All notices, statements and other documents which either party is required to give hereunder shall be in writing and shall be given by first class mail. Delivery of any notice, statement or other document to either party shall be deemed received two business days after mailing.

If to Calistoga:

Dylan Feik, City Manager  
1232 Washington Street  
Calistoga, CA 94515

If to Davis:

Charles Davis  
Buster's Barbecue  
1207 Foothill Boulevard  
Calistoga, CA 94515

If to Beck:

Bob Beck  
[REDACTED]  
Calistoga, CA 94515

Any party hereto may, from time to time, by written notice to the other parties, designate a different address and/or a different person, which shall be substituted for the one specified above. Any notice or other documents sent by registered or certified mail as aforesaid shall be deemed to have been effectively served or delivered at the expiration of 24 hours following the deposit of said notice or other documents in the United States mail.

**13. ATTORNEYS' FEES.** In the event that any action, suit or other proceeding is instituted to remedy, prevent or obtain relief from a breach or anticipatory breach of this Agreement, or arising out of a breach or anticipatory breach of this Agreement, the prevailing party shall recover from the other party all of such prevailing party's reasonable attorneys' fees and costs incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions.

**14. VOLUNTARY EXECUTION.** The parties warrant and certify that they are authorized to execute this Agreement and have entered into this Agreement freely, voluntarily, and of their own volition without fraud, duress, or undue influence. The parties have read the Agreement in its entirety, know and understand the contents thereof, and sign the Agreement as their own free act.

15. **NO MODIFICATION.** This Agreement can be amended, modified or terminated only by a writing executed by each of the parties and no future representations, promises or conditions not set forth herein in connection with the subject matter of this Agreement shall be binding upon any party to this Agreement unless made in writing and signed by each party.

16. **MERGER OF PRIOR AGREEMENTS AND UNDERSTANDINGS.** This Agreement contains the entire understanding among the parties related to the transaction contemplated herein and all prior or contemporaneous agreements, understandings, representations and statements, oral or written relating to nuisance violations at the Property related to the arbor structure are merged herein and shall be of no further force or effect.

17. **SECTION HEADINGS.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

18. **COUNTERPART EXECUTIONS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any faxed or scanned counterpart of this Agreement shall be deemed to be an original.

19. **SEVERABILITY.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining portion of the Agreement shall continue to be valid and will be performed, construed, and fully enforced to the fullest extent permitted by law, and the invalid or unenforceable term shall be deemed amended and limited in accordance with the intention of the parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

20. **JURISDICTION AND GOVERNING LAW.** This Agreement shall be interpreted, construed, governed, and enforced under and pursuant to the laws of the State of California. Any action to enforce any term or condition of this Agreement shall be brought in the Napa County Superior Court which shall hear or determine any such dispute. The prevailing party shall be entitled to statutory costs and attorney's fees.

\*\*\*

IN WITNESS WHEREOF, the parties have authorized execution of this Agreement as of the Effective Date of the Agreement.

CITY OF CALISTOGA:

By:    
Dylan Feik, CITY MANAGER

CHARLES DAVIS:

By: \_\_\_\_\_



BOB BECK:

By: \_\_\_\_\_



APPROVED AS TO FORM:

By: \_\_\_\_\_

  
**For** Michelle Marchetta Kenyon, CITY ATTORNEY



# EXHIBIT A



## OFFICIAL NOTICE

City of Calistoga

### NOTICE OF VIOLATION & ORDER TO ABATE

Location of violation: 1207 Foothill Boulevard

APN: 011-310-007

Case No. 18-304 Date issued: September 11, 2018

Notice was distributed to the following responsible persons:

Property owner	Operator
Bob Beck [REDACTED] Calistoga, CA 94515	Charles Davis, Buster's Barbeque 1207 Foothill Boulevard Calistoga, CA 94515

**The City of Calistoga has determined that the following sections of the Municipal Code have been violated and constitute a nuisance.**

Violation	Code Section Violated	Violation description
1	CMC § 15.08.010	Work exceeds the design for the arbor approved by Building Permit B16-99 issued by the City of Calistoga on December 7, 2017, as shown on the permit's plans and specifications, including the structure's height, roof materials and wall enclosures
2	CMC § 15.36.010	The arbor constitutes a clear and inimical threat to human life, safety or health through faulty structural installation
3	CMC § 17.41.020.B.3.a.	The construction of nonresidential structures that do not constitute minor site modifications is subject to prior design review approval by the Calistoga Planning Commission

**The following actions are required to correct these violations within the prescribed time period(s).**

Violation	Corrective Action Required	Deadline for Compliance
1, 2, 3	Remove the roof portion of the illegal structure  Demolish and remove entire arbor structure from rear of property	Within 24 hours of receipt of this Order September 14, 2018
1, 2	Cease all commercial operations of restaurant until the arbor has been removed	Immediately upon receipt of this Order

**For further information about this notice, please contact the following person.**

Lynn Goldberg, Planning & Building Director - 707.942.2763 lgoldberg@ci.calistoga.ca.us

**The City's goal is voluntary compliance.** Failure to abate the above nuisances by the prescribed deadline may result in the City abating the nuisances. The City will seek the recovery of all enforcement costs, including legal fees.

Any person having any record title or legal interest in the property to be abated may appeal this Notice of Violation to the City Council with regards to Violation No. 1 above as provided by CMC Section 1.12.070(B) within 15 days, and Violation No. 2 above to the Calistoga Building Standards Advisory and Appeals Board as provided by CMC Section 1.12.070(B) within 15 days. Failure to appeal within the time and manner provided will constitute (i) A waiver of all rights to an administrative hearing for determination of the matter, and (ii) a failure to exhaust administrative remedies.

## **EXHIBIT B**



RECEIVED

SEP 13 2018

CITY OF CALISTOGA



September 13, 2018

City of Calistoga  
1212 Washington Street  
Calistoga, CA 94515

**ATTENTION:** Administrative Citation Hearing Officer

**Re: Appeal by Buster's Southern BBQ to Unnecessary Closure of Business, Excessive Scope of Required Demolition and Citation for Design review not Originally imposed**

This letter is to appeal the Notice of Violation & Order to Abate to the extent that the scope of demolition requested by the Planning & Building Director is excessive and unnecessary from a safety perspective, the citation for lack of design review is improper as it was not originally required, and continuing closure of the restaurant business is not reasonable necessary or required from a public safety perspective.

#### **EXCESSIVE SCOPE OF REQUIRED DEMOLITION**

More specifically, we are appealing the city's decision requiring Buster's to tear down the entire arbor because much of the structure had been inspected at every step of the construction process and

actually signed off by your Calistoga Certified Inspector. See attached inspection record form with dates and attached permit.

We did address the correction notice dated Sept. 5, 2018, but received the correction notice on Friday, Sept 7<sup>th</sup>, by contacting our structural engineers, MKM Engineering immediately upon receiving the notice, as witnessed by Inspector Brad Cannon and by addressing the structural calculations and concerns regarding the CMU block walls at the arbor structure, including detailing a rock veneer attachment per CA building code. This notice was handed to me by your inspector, Brad Cannon.

We have serious objections to tearing the entire structural down as it was built in a very safe and sound manner and its safety and structure soundness can be certified by MKM Engineering. To comply with the notice to tear down the building would require a great waste of resources and time and cause great and unnecessary financial hardship to me and my business.

We are objecting to the city's actions requiring us to tear down this structure because this structure can be used to facilitate the corrections that were giving to us by your inspector through the attached Correction Notice requiring revised plans and structural calculations instead of complete demolition.

#### **CITY'S FAILURE TO REQUIRE DESIGN REVIEW AT THE OUTSET**

It is quite troubling that only now is the city requiring design review after permits have been issued for construction, substantial expenditures of money have been made and substantial construction activities have been authorized, inspected and signed off as safe and consistent with building codes. While we take responsibility for any

deficiencies on our end, it appears that the city is attempting well after the fact to place additional unjustified fault on the applicant for proceeding without design review. The request for design review was never offered, mentioned or required when we submitted our plans and received our building permits. And it is unfair, unjust and unlawful to redirect blame and accountability for the city's failure to require and schedule design review and then by insisting that we remain closed for business at the height of our busiest time of our season and that we remove the entire arbor structure even though most of it is structurally sound and safe. The costs that will have to be incurred to rebuild because the city failed to require design review before construction commenced are prohibitive and will amount to a financial hardship to all, especially to employees needing income to survive and our patrons looking for a reasonable priced meal.

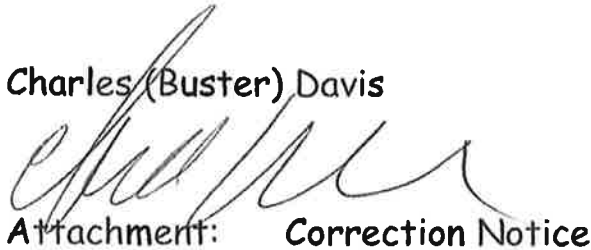
#### UNREASONABLE AND UNJUSTIFIED CLOSURE OF OUR RESTAURANT

Finally, we object to the closure at the prime time of our busiest time of our season because it is not reasonable or necessary. We respectfully appeal the closure of Buster's BBQ restaurant in that and it has been deemed safe by expert engineers and does not pose a danger to patrons. Moreover, as an additional precaution we can easily

secure the arbor area protecting the public from any hurt, harm, or danger, while serving our important patrons from the restaurant, keeping our longstanding employees working and earning income and generating much needed sales tax revenue to the city.

Regards

Charles (Buster) Davis

A handwritten signature in cursive script, appearing to read "Charles Davis", written over the printed name.

Attachment: Correction Notice

Permit

Inspection records

## **EXHIBIT C**





## Memo Letter

Date: 9/25/18

MKM File #: 180635

To: Buster BBQ  
1207 Foothill Blvd  
Calistoga, CA 94515

Re: Busters BBQ Arbor  
1207 Foothill Blvd  
Calistoga, CA 94515

Attn: Buster Davis

cc: City of Calistoga

Via: Email

Brad Cannon

☐ Please Reply

☐ No Reply Necessary

☒ For Your Information

### Remarks:

MKM & Associates has done a structural assessment of the as-built steel arbor framing located at Busters BBQ in Calistoga. The updated structural plans dated 9/25/18 describe the revisions necessary to conform with the current building code. Once these items have been completed, the structure is safe from a life safety standpoint and meet the current California building code. To meet the current building code, the items noted on our structural plans dated 9/25/18 will need to be completed.



**From:** Mark Douglas

ML091418MD\_180635 FIELD REVIEW.DOCX

**PROPOSAL CONTRACT**

**AGREEMENT TO PROVIDE LABOR, MATERIALS AND EQUIPMENT**

**RFPS: (PW#01-5559)**

**TRASH ENCLOSURE AT FIRE STATION PARKING LOT PROJECT**

This AGREEMENT is made and entered into as of the date of execution by the City of Calistoga, a municipal corporation, hereinafter referred to as "CITY" and Paul Coates Construction, hereinafter referred to as "CONTRACTOR".

**RECITALS**

The CITY requires outside assistance to provide labor, materials and equipment to complete the following: **Trash Enclosure at Fire Station Parking Lot Project.**

CONTRACTOR represents itself as possessing the necessary skills and qualifications to provide the equipment and services required by the CITY;

**NOW, THEREFORE**, in consideration of these recitals and the mutual covenants contained herein, the CITY and CONTRACTOR agree as follows:

**1.0 TERM OF AGREEMENT**

**1.1** This AGREEMENT shall be effective on and from the day, month and year of the execution of this document by the CITY.

**1.2** CONTRACTOR shall provide the necessary labor, equipment and materials to perform the work specified in the contract within 90 calendar days from Notice to Proceed.

**2.0 CONTRACTOR'S OBLIGATIONS (ATTACHMENT A)**

**2.1** CONTRACTOR shall provide the CITY with the specific labor, materials, and equipment that are described in Attachment "A", which is attached hereto, and incorporated herein by this reference, as though fully set forth at length, collectively hereinafter referred to as "DESCRIBED LABOR, MATERIALS AND EQUIPMENT".

**2.2** CONTRACTOR shall perform all work required to provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT in conformity with applicable requirements of law: Federal, State and Local.

**2.3** CONTRACTOR must be registered with the Department of Industrial Relations (DIR) in order to be authorized to work on Public Works projects and must submit certified payroll to the DIR's certified payroll website.

**2.4** CONTRACTOR shall maintain professional certifications as required in order to properly comply with all the CITY, State, and Federal law, including a City of Calistoga Business License.

**3.0 PAYMENT FOR LABOR, MATERIALS AND EQUIPMENT (ATTACHMENT A)**

**3.1** Compensation: The compensation to be paid to CONTRACTOR shall be at the rate and schedules attached hereto as Exhibit "A". However, in no event shall the amount exceed One Hundred

Forty Three Thousand Eight Hundred Fifty Eight Dollars (\$143,858.00). Payment by CITY under this AGREEMENT shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment.

**3.2** Timing of Payment: Payment shall be made in the following manner: Thirty (30) days from receipt of invoices.

**3.3** Changes in Compensation: The CONTRACTOR will not undertake any extra work that will incur costs in excess of the Contract Proposal without prior written amendment to this AGREEMENT.

#### **4.0** SUBCONTRACTING (ATTACHMENT B)

**4.1** If CONTRACTOR subcontracts for any of the equipment or support services that are to be provided under this Agreement, CONTRACTOR shall be as fully responsible to the CITY for the acts and omissions of CONTRACTOR'S subcontractors and for the persons either directly or indirectly employed by the subcontractors, as CONTRACTOR is for the acts and omissions of persons directly employed by CONTRACTOR. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor or CONTRACTOR and the CITY. CONTRACTOR shall bind every subcontractor to the terms of the Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the CITY.

**4.2** The name and location of the place of business of each subcontractor who will perform work or labor or provide equipment to the CONTRACTOR in performing this Agreement are contained in Attachment "B" which is attached hereto and incorporated herein as though fully set forth at length.

#### **5.0** EQUIVALENT TERMS (ATTACHMENT C)

NOT USED

#### **6.0** EXTRA WORK

CONTRACTOR shall not provide equipment or perform support services in excess of the DESCRIBED LABOR, MATERIALS AND EQUIPMENT, without the prior written approval of the CITY. All requests for extra work shall be by written change order submitted to the CITY prior to the delivery of such equipment or the commencement of such work.

#### **7.0** VERBAL AGREEMENT OR CONVERSATION

No verbal agreement or conversation with any officer, agent or employee of the CITY, either before, during or after the execution of this AGREEMENT, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle CONTRACTOR to any additional payment whatsoever.

#### **8.0** TERMINATION OF AGREEMENT

In the event of CONTRACTOR'S failure to prosecute, deliver, or perform the DESCRIBED EQUIPMENT/SUPPORT SERVICES, the CITY may terminate this AGREEMENT by notifying CONTRACTOR by certified mail of said termination. The City Manager shall determine any final payment due to CONTRACTOR.

## **9.0 COVENANTS AGAINST CONTINGENT FEES**

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONTRACTOR, to solicit or secure this AGREEMENT, and that CONTRACTOR has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this AGREEMENT. For breach or violation of this warranty, the CITY shall have the right to terminate this AGREEMENT without liability, or, at the CITY's discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

## **10.0 STATUS OF CONTRACTOR**

CONTRACTOR shall provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT as an independent Contractor and in pursuit of CONTRACTOR'S independent calling, and not as an employee of the CITY.

## **11.0 ASSIGNMENT OF CONTRACT**

CONTRACTOR is without right to and shall not assign this AGREEMENT or any part thereof or any monies due hereunder without the prior written consent of the CITY, which shall not be unreasonably withheld.

## **12.0 HOLD HARMLESS**

**12.1** CONTRACTOR agrees to indemnify and hold the CITY and CITY officer's, officials, employees and agents harmless from, and against any and all liabilities, claims, demands, causes of action, losses, damages and costs, including all costs of defense thereof, arising out of, or in any manner connected directly or indirectly with, any acts or omissions of CONTRACTOR or CONTRACTOR'S agents, employees, subcontractors, officials, officers or representatives. CONTRACTOR'S obligation herein includes, but is not limited to, alleged defects in the labor, materials and equipment delivered by CONTRACTOR. Upon demand, CONTRACTOR shall, at its own expense, defend CITY and CITY's officers, officials, employees and agents, from and against any and all such liabilities, claims, demands, causes of action, losses, damages and costs.

**12.2** CONTRACTOR'S obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages or costs that arise out of the CITY's intentional wrongful acts, CITY's violations of law, or the CITY's sole active negligence.

## **13.0 INSURANCE**

**13.1** Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees, as indicated:

### **13.2 Minimum Scope of Insurance. Coverage shall be at least as broad as:**

Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, coverage shall apply to all owned, non owned and hired vehicles.

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

**13.3 Minimum Limits of Insurance. Consultant shall maintain limits no less than:**

General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a general Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If Contractor maintains higher limits than the specified minimum limits, City requires and shall be entitled to higher limits maintained by the Contractor.

Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.

**13.4 Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:**

The City, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.

For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

The policy shall cover inter-insured suits and include a "Separation of Insureds" or "severability" clause which treats each insured separately

Contractor shall provide 30-day written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Town.

Verification of Coverage. Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

**13.5 Waiver of Subrogation.** Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

#### **14.0 RETENTION**

The City shall retain 5% of such estimated value of the work done as part security for the fulfillment of the Contract by the Contractor, and shall monthly pay to the Contractor, while carrying on the work, the balance after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the Contract. No such estimate or payment shall be required to be made when, in the judgment of the Engineer, the work is not proceeding in accordance with the provisions of the Contract, or when in his judgment the total value of the work done since the last estimate amounts to less than Three Hundred Dollars (\$300.00).

#### **15.0 BONDS**

**Not Applicable.**

#### **16.0 TIME OF COMPLETION AND LIQUIDATED DAMAGES**

The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within 90 calendar days of the Notice to Proceed.

#### **17.0 WARRANTIES**

A. The CONTRACTOR shall furnish a one-year warranty to the CITY in the following format:

#### ***TRASH ENCLOSURE AT FIRE STATION PARKING LOT***

***City of Calistoga***

***Napa County, California***

*Construction work on the subject project has been performed in accordance with the Construction Drawings and specifications. We hereby agree to repair or replace any or all of our work together with any other adjacent work which may be displaced or damaged by so doing, that may prove to be defective in its workmanship or materials within a period of one (1) year from the date of filing the Notice of Completion of the above-named project without any expense to the OWNER, ordinary wear and tear and unusual abuse or neglect excepted.*

*In the event of our failure to comply with the above-mentioned conditions within ten (10) days after notification in writing by the OWNER, we do hereby authorize the OWNER or his successor in interest to proceed to have said defects repaired and made good at our expense and we will honor and pay the costs and charges therefore upon demand including reasonable legal fees.*

Signed: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**The warranty shall be submitted to the CITY prior to the date of filing of the Completion Notice.**

## **18.0 DISPUTES**

**18.1** If a dispute should arise regarding the performance of this AGREEMENT, the following procedures shall be used to address any question of fact or interpretation not otherwise settled by agreement between the parties. Such questions, if they become identified as part of a dispute between persons operating under the provisions of the AGREEMENT, shall be reduced to writing by the complaining party. A copy of such documented dispute shall be forwarded to the other party involved along with recommended methods of resolution. The party receiving the letter shall reply to the letter along with a recommended method of resolution within ten (10) days of receipt of the letter.

**18.2** If the dispute is not resolved, the aggrieved party shall send to the CITY a letter outlining the dispute for City Manager's resolution.

**18.3** If the dispute remains unresolved and the parties have exhausted the procedures of this section, the parties may then seek remedies available to them at law.

## **19.0 NOTICES**

**19.1** Any notices to be given under this AGREEMENT, or otherwise, shall be served by certified mail.

**19.2** For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CITY and the proper person to receive any notice on the CITY's behalf is:

CITY OF CALISTOGA  
1232 Washington Street  
Calistoga, CA 94515  
Attention: Mike Kirn  
Public Works Director  
Public Works Department

**19.3** For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CONTRACTOR and the proper person to receive any notice on the CONTRACTOR'S behalf is:

Paul Coates  
Paul Coates Construction  
P.O. Box 1006  
Calistoga, CA 94515

## **20.0 ATTORNEY'S FEES**

In the event that one party incurs expenses, including attorney's fees and costs, in enforcing the provisions of this AGREEMENT, such party shall be entitled to recover from the other party reimbursement for those costs including reasonable attorney's fees.

**21.0 CONTRACTOR'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986**

CONTRACTOR certifies that CONTRACTOR is aware of the requirements of the Immigration Reform and Control Act of 1986 (and USC 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.

PAUL COATES CONSTRUCTION, INC.

By:   
Signature

10-18-18  
Date

CITY OF CALISTOGA,  
a Municipal Corporation

By:   
Dylan Feik, City Manager

10/23/18  
Date

ATTEST:

  
Kathy Flamsa, City Clerk

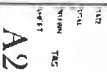


# **ATTACHMENT A**

## **SCOPE OF WORK PROPOSAL**

### **COMPENSATION SCHEDULE**

**Thomas Stuppert Architect**  
1921 West Den Creek Road, Hockessin, CA 19344  
757-113-5414 *stuppert@att.net*



## **ATTACHMENT B**

### **SUBCONTRACTORS**

Masonry Contractor Installers, Inc.  
Modern Method Roofing  
Dan Bazzoli Cement Contractor  
Blakeley Construction, Inc.

**PAUL COATES CONSTRUCTION, INC.**

P. O. Box 1006, Calistoga, CA 94515  
707-942-5268 [broccoclstg@aol.com](mailto:broccoclstg@aol.com)

October 8, 2018

TO: Mike Kirn  
Public Works

RE: Proposal for Trash Enclosure  
Located behind Calistoga Fire Department

Labor and materials to construct a 20 x 40' trash enclosure as per plans by Thomas Stimpert Architect, dated October 3, 2018.

- Saw cut to remove part of existing concrete unit to be able to repave in front of new unit
- Remove concrete needed to complete project with the asphalt to taper back and keep drainage working in lot; the asphalt removal includes 10' in front of new unit, 10' to the east of the unit, and the new sewer line area which is figured 4' wide; all demolished asphalt and concrete to be hauled to an approved dump site
- Build the pad for the new unit to be poured on
- Dig in and install 2 new man holes and sewer lines requested; approximately 130' of 6" SDR-26 line will be trenched and installed; three cleanouts, two 6" risers for drain boxes and tie into existing city sewer; pipes will be bedded in sand up to the spring line of the pipe, then covered with lean concrete up to the paving depth; all trench spoils to be off hauled
- Supply extra base to build up to new unit, grade as needed; existing lot base is assumed to be okay to re-pave over
- Re-pave areas to be re-paved with 6" of 1/2" grade asphalt in two 3" layers; total of 1,100 square feet
- 4" grade base for slab, steel bollards
- Concrete form work, slab poured & finished
- Concrete block wall
- Concrete steel – doors, posts, welded wire
- Framing
- Plumbing
- Roofing and flashing
- Solar lights with motion sensors and tamper proof cages
- Painting
- 2 steel doors
- 2 door closers
- 2 door locks
- Contractor fee

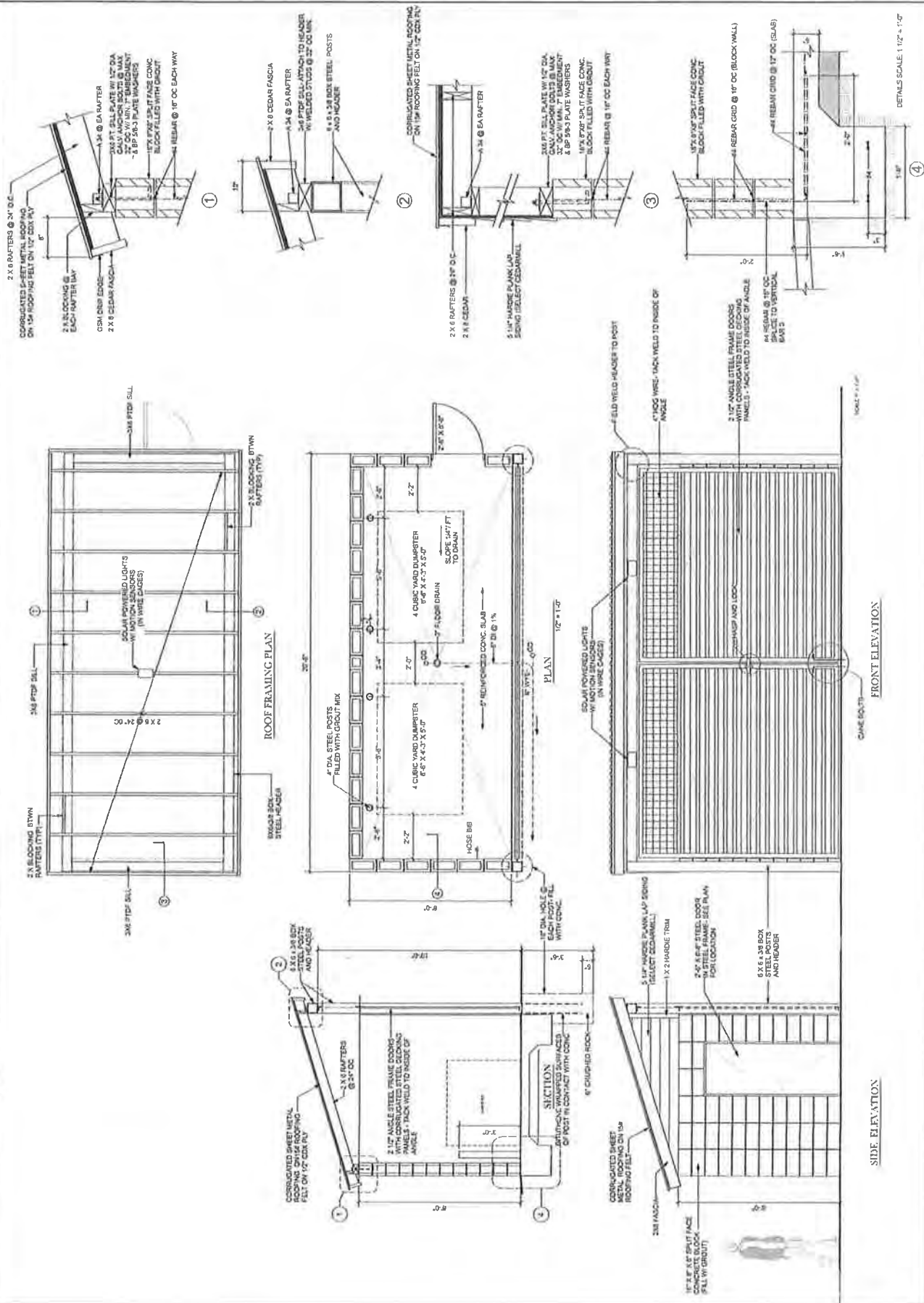
**TOTAL PROPOSAL**

**\$ 143,858.00**

**To accept this proposal, please sign and date below.**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date



**AGREEMENT FOR CONSULTANT SERVICES BETWEEN  
CITY OF CALISTOGA  
AND  
PATRICK CLARK CONSULTING**

This Agreement ("Agreement") is made between the City of Calistoga ("CLIENT") and Patrick Clark Consulting, a sole proprietorship ("CONSULTANT").

**AGREEMENT**

1. TERM – This Agreement will become effective on the date by which both parties have signed the Agreement ("Effective Date") and will continue in full force and effect until terminated in accordance with Section 15, except to the extent renewed or extended in accordance with Section 16.
  
2. SERVICES –
  - a. Services Provided – CONSULTANT shall provide labor relations consulting services in accordance with Attachment A, which is incorporated into this Agreement by this reference, but only to the extent Attachment A services are strictly limited by and interpreted in accordance with Section 2.b. of this Agreement and otherwise consistent with this Agreement. These services, as thus defined and limited, shall be collectively known as "CONSULTANT Services."
  
  - b. Services NOT PROVIDED: Complementary/Sub-Specialist and Licensed Professional Services – CONSULTANT Services shall be strictly limited and interpreted to *exclude* any work that might be construed to require any complementary or sub-specialization or professional license. CLIENT understands that CONSULTANT hires no employees or sub-contractors to provide complementary/sub-specialist or licensed professional services, directly or indirectly for the benefit of CLIENT, and possesses no complementary/sub-specialist expertise or professional licensure himself. Therefore, both parties agree that:
    - i. CONSULTANT shall provide no complementary/sub-specialist or licensed professional services, directly or indirectly to CLIENT, pursuant to this Agreement or otherwise;
    - ii. *Excluded* complementary/sub-specialist and licensed professional services include, but are not necessarily limited to, services properly performed instead by an attorney, accountant, actuary, banker, insurance agent/broker/company, investment banker, investment advisor, mortgage banker/broker, security broker/dealer, structured settlement broker, or expert in compensation studies.
    - iii. CLIENT shall not construe or rely upon any CONSULTANT Services, or any analysis, advice, or services in fact provided by CONSULTANT, pursuant to this Agreement or otherwise, as complementary/sub-specialist or licensed professional services;
    - iv. Although CONSULTANT might periodically recommend CLIENT hire various complementary/sub-specialists or licensed professionals, CLIENT shall be required to and shall be solely responsible for determining if and when CLIENT reasonably requires complementary/sub-specialists or licensed



(CONSULTANT's initials)



(CLIENT's initials)



- professionals, for any purpose, including any contemplated by or reasonably required to accomplish the purposes of Section 2.a. or Attachment A; and
- v. CLIENT shall be solely responsible for directly selecting, vetting, employing or contracting with, and supervising any necessary or desired complementary/sub-specialists and licensed professionals, including but not limited to any contemplated by or reasonably required to accomplish the purposes of Section 2.a. or Attachment A. Such complementary/sub-specialists and licensed professionals shall include, but not necessarily be limited to:
- a) Legal counsel, for all CLIENT's legal advice, legal analysis, and legal services, including, but not necessarily limited to final drafting, reviewing, approving, and assuring legal adequacy of all language and content of all Memorandums of Understanding (MOUs), prior to MOU adoption by CLIENT City Council;
  - b) Actuaries, for all CLIENT's actuarial needs, including, but not necessarily limited to any actuarial analysis needed to sufficiently consider and develop desired proposals, counter-proposals, strategies, and human resources and labor relations documents as are necessary to negotiations, for example as may be required for consideration and analysis of employee and retiree benefits options' viability, cost, pros and cons, and risks;
  - c) Accountants, for CLIENT's accountancy needs, including, but not necessarily limited to tax counseling related to the language and content of all Memorandums of Understanding (MOUs), prior to MOU adoption by CLIENT City Council;
  - d) Appropriate financial, investment, and insurance professionals, for all other financial advice and services including, but not necessarily limited to advice and services related to the availability of funds or specified rate of return or interest; the expected performance, fluctuation in or future market value of investments or securities; potential sales, earnings, profitability or economic value; securing financing; and the preparation of pro-forma statements, such as those which are the basis of and/or are used with third parties for the purpose of securing capital through debt, equity creditor or other means;
  - e) Compensation study experts, for all CLIENT's necessary or desired compensation studies helpful in forming appropriate bargaining proposals related to compensation; and
  - f) Any and all other complementary/sub-specialists or licensed professionals, needed or desired, for any and all other analysis, advice, or services, requiring such complementary/sub-specialization or professional licensure, which are reasonably required in order to accomplish *any* CLIENT purpose, including the purposes of Section 2.a and Attachment A

3. ABILITY TO PERFORM – CONSULTANT agrees and represents that it has the availability, ability, and expertise to perform CONSULTANT Services.

4. DISCLAIMER OF GUARANTEE – CONSULTANT shall perform CONSULTANT Services in a manner consistent with the level of due diligence normally observed by a person of CONSULTANT's qualifications, offering CONSULTANT Services, as defined by Section 2, Attachment A, and this Agreement generally. However, nothing in this Agreement and nothing in CONSULTANT's statements to CLIENT should be construed as a promise or guarantee about outcomes, completion time, or total fees. CONSULTANT makes no such promises or guarantees. CONSULTANT's comments about such topics are expressions of opinions only. Actual outcomes, time required, and fees due (other than hourly rate and other billing policies specified in Section 7 and Attachment B) may vary from any estimates given.
5. DIRECTION & EXECUTION –
- a. Direction: To the extent consistent with Section 6 and the rest of this Agreement, CONSULTANT shall take direction from, and be monitored by CLIENT's City Manager, and/or a duly authorized designee, except as otherwise specified in this Agreement.
  - b. Execution: CONSULTANT shall assign Patrick Clark to have overall responsibility for the progress and execution of CONSULTANT's obligations under this Agreement. Any change in this assignment may be cause for immediate termination of this Agreement by CLIENT, in accordance with Section 15.
6. ENTITY AS CLIENT – CLIENT is the client, and the only client, under this Agreement. Therefore, CONSULTANT's duty under this Agreement is to the CLIENT itself, as represented by its duly elected legislative body, when acting in accordance with all applicable laws. Accordingly, and notwithstanding Section 5, or any other provision of this Agreement, CONSULTANT
- a. Adopts no separate duty by this Agreement to any individual or entity working with or for CLIENT;
  - b. Shall only take direction from any individual or entity working with or for CLIENT to the extent CONSULTANT finds it consistent with CONSULTANT's duty to CLIENT pursuant to this agreement; and
  - c. Shall be permitted to consult with CLIENT's legislative body, as CONSULTANT deems necessary, to properly execute CONSULTANT's obligations to CLIENT under this Agreement.
7. COMPENSATION –
- a. Compensation Rates, Definitions, and Policies – Compensation rates, definitions, and policies are as set forth in Attachment B, and incorporated into this Agreement by this reference.



- b. Method of Billing and Payment – At or near the end of each calendar month, CONSULTANT shall submit to CLIENT an invoice for CONSULTANT's Minimum Fee, Additional Time Worked, and, at CONSULTANT's discretion, Billable Expenses, incurred during that calendar month, in accordance with the compensation rates, definitions, and policies described in Attachment B. CLIENT shall pay each invoice in full within 30 days of its receipt.
- c. Total Compensation – The total compensation and costs payable to Consultant under this Agreement shall not exceed the sum of twenty thousand dollars (\$20,000) ("Compensation Cap"), except to the extent Compensation Cap is increased or removed by renewal or extension of this Agreement, per the terms of Section 16.
8. INSURANCE – CONSULTANT, at CONSULTANT's own cost and expense, shall procure and maintain, for the duration of the Agreement, insurance policies and endorsements of the type described below.

a. Coverage Required –

- i. Business General Liability Insurance Policy – \$1,000,000.00 per claim and \$2,000,000.00 general aggregate;
- ii. Auto Liability Insurance Policy – \$1,000,000.00;
- iii. Errors and Omissions Insurance Policy – \$1,000,000.00; and
- iv. Workers Compensation Insurance Policy, if/when applicable – Currently CONSULTANT has no employees and is not planning to hire any employees. Therefore, currently CONSULTANT maintains no workers compensation insurance. However, if CONSULTANT hires employees in the future, at that time CONSULTANT shall obtain workers compensation insurance and maintain it for so long as CONSULTANT retains such employees.

- b. Endorsements – Within a reasonable amount of time after the later of the following two dates, if those dates differ: i) the Effective Date of this Agreement, stated in Section 1; and ii) the date by which all parties have signed this Agreement, CONSULTANT shall ensure that CONSULTANT's business general liability and auto liability insurance policies, referenced in Sections 8.a.i-ii, name CLIENT and related parties as additional insured(s), as follows: "City of Calistoga and its officers, employees, agents, and volunteers."

c. Evidence of Coverage –

- i. As soon as practicable upon securing the endorsements required by Section 8.d., CONSULTANT shall ensure that (a) certificates of insurance indicating evidence of the endorsements required by Section 8.d are delivered to CLIENT; and, (b) within a reasonable period of time after a copy of any particular policy required by Section 8.a is requested by CLIENT in writing, that requested copy is delivered to CLIENT.

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(CLIENT's initials)

- ii. Thereafter, at reasonable intervals, in order to assure that required insurance coverage has not lapsed, with a reasonable period of time after written request by CLIENT (a) CONSULTANT shall ensure CLIENT is provided with requested additional certificates of insurance, indicating evidence of the endorsements required by Section 8.d; and (b) CONSULTANT shall ensure CLIENT is provided with any requested copies of any particular policy required by Section 8.a, if the language in that policy may have changed since CLIENT's last request.
- d. Substitute Insurance – CONSULTANT agrees that if it fails to maintain insurance coverage of the type described under Section 8.a. and 8.b., for the duration of this Agreement, whether due to the required insurance lapsing, expiring, terminating, being suspended, or otherwise failing to be maintained, and then fails to reinstate such insurance within 8 business days of receiving written notice from CLIENT of CLIENT's plan to exercise its rights under this Section 8.d., CLIENT may either (i) immediately terminate this Agreement, upon delivery of written notice; or (ii) take out the minimum insurance necessary to rectify the lapse and pay the premium(s) thereon, at CONSULTANT's expense.
- e. Self-Insured Retention or Deductible – CONSULTANT shall be responsible for all deductibles and self-insured retentions on CONSULTANT's insurance policies, except when CLIENT makes a claim as an additional insured, in which case CLIENT shall be responsible.
- f. Subcontractors – CONSULTANT subcontractors must also carry insurance policies of the type described in Section 8.a., but only to the extent and for the duration they directly perform CONSULTANT Services, as opposed to support services for the general operation of CONSULTANT's business, including, but not limited to secretarial services, accountancy services, and legal services to assist CONSULTANT in drafting and negotiating this Agreement, for example.
9. INDEPENDENT CONTRACTOR – Both parties agree that CONSULTANT shall perform CONSULTANT Services as an independent contractor, not as an employee of CLIENT. Accordingly, CONSULTANT shall retain the right to perform similar and different services for others during the term of this Agreement; shall determine the means, methods, timing, and manner of performing CONSULTANT Services, subject only to the requirements of the Agreement; and shall be the primary provider of the tools and supplies needed to perform CONSULTANT Services.
10. ASSIGNMENT AND SUBCONTRACTING – A substantial inducement to CLIENT for entering this Agreement is to avail itself of CONSULTANT's unique combination of experience, reputation, and skill in delivering CONSULTANT Services. Therefore, CONSULTANT agrees to refrain from assigning this Agreement or subcontracting any portion of CONSULTANT Services to a third party, without prior written permission from CLIENT. However, nothing in this Section shall prohibit CONSULTANT, with or without prior written permission from CLIENT, from hiring independent contractors or

employees to provide support services for the general operation of CONSULTANT's business, including, but not limited to secretarial services, accountant services, and legal counsel to assist CONSULTANT in drafting and negotiating this Agreement, for example.

11. COMPLIANCE WITH LAWS – CONSULTANT agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to CONSULTANT.
12. CONFIDENTIALITY – All data, documents, discussions, and other information developed or received by CONSULTANT in performing CONSULTANT Services shall be deemed confidential ("Confidential Information"), except that which is either immaterial, shared in communications with representatives of CLIENT bargaining units, publicly available, generally known, and/or released by CLIENT to the public. CONSULTANT shall not disclose Confidential Information, except as CONSULTANT reasonably and in good faith determines is either required by law, authorized by CLIENT, helpful in order either to perform CONSULTANT Services or to execute any other provision this Agreement, or is otherwise reasonable, as in the event of a dispute between CONSULTANT and CLIENT.
13. OWNERSHIP AND LICENSING OF INTELLECTUAL PROPERTY –
  - a. Ownership of Intellectual Property – CONSULTANT owns the copyright to any and all reports, documents, and other written material provided by CONSULTANT to CLIENT in the performance of this Agreement ("Written Products"). Therefore, CLIENT shall not attempt to register copyright or resell any version of such Written Products. CONSULTANT may take, retain, disclose, reformulate, reuse, resell and register copyright versions of such Written Products from which any and all of CLIENT's confidential information has been removed.
  - b. Licensing of Intellectual Property – This Agreement creates a nonexclusive and perpetual license for CLIENT to copy, use, modify, or reuse any and all Written Products, for direct use by CLIENT.
14. RECORDS AND INSPECTIONS – CONSULTANT shall maintain materially complete records with respect to CONSULTANT Services for a period of three years after the termination of this Agreement. CLIENT shall have the right, at its own expense, to access, examine, and make copies such records, during normal business hours, pursuant to specific, reasonable date, time, and other relevant logistical arrangements made in advance with CONSULTANT.
15. TERMINATION OF AGREEMENT –
  - a. Elective Termination – Either party, CONSULTANT or CLIENT, may terminate this Agreement, either i) with 15 days advance written notice, with or without cause; or ii) immediately upon delivery of written notice, with cause, as defined by Section 8.d.i. or Section 5.b.

- b. Automatic Termination – If the Compensation Cap described in Section 7.c. is reached, this Agreement shall automatically terminate, except to the extent renewed or extended per the terms of Section 16.
- c. Requirements Upon Termination – In the event of termination, in accordance with either Sections 15.a or 15.b., CLIENT shall compensate CONSULTANT for CONSULTANT's Minimum Fee, Time Worked, and Billable Expenses, incurred up to the date of termination, within thirty days of CONSULTANT's delivery to CLIENT of both a final invoice and all significant work product generated prior to the date of termination, but not yet provided to CLIENT, if any.
16. RENEWAL OR EXTENSION OF AGREEMENT – This Agreement may be renewed or extended by written agreement of the parties, to increase or eliminate Compensation Cap, before or within 30 days after Automatic Termination. However, nothing in this Section, or this Agreement generally, requires either party to renew or extend this Agreement or to enter into negotiations regarding the renewal or extension of this Agreement.
17. NO THIRD PARTY BENEFICIARY – This Agreement is made solely for the benefit of the parties to this Agreement and their respective successors, heirs, and assigns, and no other person or entity may have or acquire any right by virtue of this Agreement.
18. NOTICE – Any notice required by Section 8, 15, or Attachment B of this Agreement shall be in writing and either delivered personally or sent by prepaid, first class mail, to the applicable party's physical address, provided below. Any other notice required by this Agreement may be emailed, to the applicable party's email address, provided below. Either party may change its addresses or phone number by notifying the other party in writing of the change. Any notice, request, or other communication between the parties, whether required by this Section or in voluntary compliance with it, shall be deemed communicated upon personal delivery, or within 72 hours from the time of mailing or emailing, if sent as provided in this Section.

If to CLIENT:

City of Calistoga  
Attn.: Dylan Feik  
1232 Washington Street  
Calistoga, CA 94515  
Tel: (707) 942-2806  
Email: dfeik@ci.calistoga.ca.us

If to CONSULTANT:

Patrick Clark Consulting  
Attn.: Patrick Clark  
770 L Street, Suite 950  
Sacramento, CA 95814  
Tel: (916) 838-2806  
Email: pc@patrickclarkconsulting.com

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(CONSULTANT's initials)



(CLIENT's initials)



19. ENTIRE AGREEMENT – This Agreement and all other agreements, exhibits, attachments, and schedules referred to in this Agreement constitute(s) the final, complete, and exclusive statement of the terms of the agreement between the parties, pertaining to CLIENT hiring CONSULTANT to perform CONSULTANT Services, and supersedes all other prior or contemporaneous oral or written understandings and agreements of the parties pertaining thereto. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty, except those expressly set forth in this Agreement.
20. SEPARATE WRITINGS AND EXHIBITS – The following agreements, exhibits, attachments, schedules, or other separate writings, as executed contemporaneous herewith or as amended in the future in accordance with Section 21, constitute a part of this Agreement and are incorporated into this Agreement by this reference:
- a. ATTACHMENT A – Scope of Work
  - b. ATTACHMENT B – Compensation Rates, Definitions, and Policies
  - c. Any additional exhibits, attachments, schedules, or other separate writings, added to this Agreement in the future, by amendment, in accordance with Section 21.

If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, attachment, schedule, or other incorporated writing, the provisions of this Agreement shall control.

21. AMENDMENTS – This Agreement and its attachments may be supplemented, amended, or modified only by a writing signed by both parties, except as allowed by Attachment B.
22. SEVERABILITY – If a court or an arbitrator of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining provisions of this Agreement shall not be affected. However, notwithstanding the foregoing, this clause shall not be applied so as to defeat the primary purpose of the parties, which is CLIENT hiring CONSULTANT to perform CONSULTANT Services in exchange for compensation described in Section 7 and Attachment B.
23. JURISDICTION OF LAW – The laws of the State of California shall govern the validity, construction, and effect of this Agreement, except to the extent said laws are superseded by, or in conflict with applicable federal laws and/or federal regulations.
24. CAPTIONS – The captions in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties to this Agreement.
25. WAIVER – No delay or omission to exercise any right, power, or remedy accruing to parties under this Agreement shall impair any right, power, or remedy of parties, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement (1) shall

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be effective unless it is in writing and signed by the party making the waiver; (2) shall be deemed to be a waiver of, or consent, to any other breach, failure of a condition, or right or remedy; or (3) shall be deemed to constitute a continuing waiver unless the writing expressly so states.

26. AUTHORITY TO ENTER AGREEMENT – Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement on behalf of each respective party.

CLIENT (City of Calistoga)

By:

  
Dylan Feik  
City Manager

10/11/18  
Date

CONSULTANT (Patrick Clark Consulting)

By:

  
Patrick Clark  
Consultant

10/15/18  
Date

## ATTACHMENT A

### SCOPE OF WORK

Under direction and supervision of CLIENT's Fire Chief, and/or a duly authorized designee, and in consultation with and with review and approval by CLIENT's duly provided, appropriate, relevant, necessary, and desired complementary/sub-specialists and licensed professionals, including, but not necessarily limited, to those described in Section 2.b. of this Agreement, "CONSULTANT Services" to include:

1. Serve as the CLIENT's Chief Labor Negotiator;
2. Allow CLIENT's City Council the opportunity to create the guidelines and parameters for ensuing discussions with CLIENT's recognized employee group(s);
3. Meet with CLIENT's Negotiation Committee and City Council to ensure proper relations with CLIENT's City Council and to assist in the formulation of CLIENT's position(s) for forthcoming meetings with CLIENT's recognized employee group(s);
4. Collaboratively develop guidelines, proposals, counter-proposals, strategies, and human resources and labor relations documents as are necessary to negotiations, specifically in cooperation with CLIENT's duly provided complementary/sub-specialists and licensed professionals, needed, or desired for input, review, or approval, as described in Section 2.b. of this Agreement, including, but not necessarily limited to, CLIENT's Negotiation Committee members and, without limitation, CLIENT's City Council, as well as CLIENT's legal counsel and actuary(ies), if/as necessary or desired.
5. Assist in developing tentative agreements, and MOU provisions, as are reasonable and/or necessary to negotiations, specifically at the direction of CLIENT's Negotiation Committee and CLIENT's City Council, and with the cooperation, review, and/or approval of any other appropriate, duly provided CLIENT complementary/sub-specialists and licensed professionals, as described in Section 2.b. of this Agreement, including, but not necessarily limited to CLIENT'S legal counsel, where CLIENT shall ensure that all tentative agreements and MOU provisions are subject to final review and approval by CLIENT's legal counsel and any other necessary or desired Section 2.b complementary/sub-specialists and licensed professionals, prior to MOU adoption by CLIENT's City Council.

## ATTACHMENT B

### COMPENSATION RATES, DEFINITIONS, AND POLICIES

1. CONSULTANT Invoices: CONSULTANT invoices shall include brief descriptions of Time Worked, including dates and amount of time spent, and amounts for the Minimum Fee, any Additional Time Worked at CONSULTANT's Rate, and, at CONSULTANT's discretion, amounts for Billable Expenses, if any, in accordance with the following definitions and related rates and policies.
2. Definitions:
  - a. "Minimum Fee": CONSULTANT's "Minimum Fee" shall be \$975.00, for each month (or partial month) that this Agreement is in effect, in exchange for up to 5 hours of CONSULTANT Time Worked during that month (or partial month), measured in increments of 15 minutes.
  - b. "Time Worked": Time Worked shall include both CONSULTANT's time spent performing Consultant Services and CONSULTANT's related drive time, including time spent driving between CLIENT's location(s) and CONSULTANT's office, home, or any other location.
  - c. "Additional Time Worked": "Additional Time Worked" shall mean Time Worked during each month (or partial month), beyond the amount of Time Worked that is covered by the Minimum Fee. Additional Time Worked shall be billed in increments of 15 minutes. The rate for Additional Time Worked shall be billed at CONSULTANT's Rate.
  - d. "CONSULTANT's Rate": CONSULTANT's Rate is \$195.00 per hour, billable in increments of 15 minutes.
  - e. "Billable Expenses:" CONSULTANT'S actual, reasonable, documented expenses shall be considered billable expenses, and shall be reimbursed at cost, without mark-up, by CLIENT if and when billed by CONSULTANT.
3. Amendments to Attachment B: With 30 days advance written notice, CONSULTANT shall be entitled to unilaterally increase Consultant's Rate, set herein, or otherwise amend this Attachment.



**PROFESSIONAL SERVICES AGREEMENT**  
**Traffic Study for the Yellow Rose Ranch Project**  
**Authorizing Agreement No. 797**

THIS AGREEMENT is entered into as of the 11<sup>th</sup> day of January, 2019 by and between the CITY OF CALISTOGA herein called the "City," and Fehr & Peers, herein called the "Consultant".

Recitals

WHEREAS, City desires to obtain traffic impact analysis services in connection with the Yellow Rose Ranch Project; and

WHEREAS, Consultant hereby warrants to the City that Consultant is skilled and able to provide such services described in Section 1 of this Agreement; and

WHEREAS, City desires to retain Consultant pursuant to this Agreement to provide the services described in Section 1 of this Agreement.

Agreement

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of Services. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by reference.

2. Time of Performance. The services of Consultant are to commence no sooner than the date written above and, be completed not later than nine weeks from the same. Any changes to these dates must be approved in writing by the Planning and Building Director or his or her designee.

3. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit "A". However, in no event shall the amount exceed Forty-Nine Thousand, Nine-Hundred and Ninety Dollars (\$49,990). Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

B. Timing of Payment. Billing for said services may be made on a monthly basis. City shall review Consultant's statement and pay Consultant for services rendered within 30 days of receipt of the Consultant's statement.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount of Forty-Nine Thousand, Nine-Hundred and Ninety Dollars (\$49,990).

D. Litigation Support. Consultant agrees to testify at City's request if litigation is brought against City in connection with Consultant's report. Unless the action

is brought by Consultant or is based upon Consultant's negligence, City will compensate Consultant for the preparation and the testimony at Consultant's standard hourly rates.

4. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of implementing this Agreement, except working notes and internal documents ("Work Product"), shall become the sole property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its sole discretion without further compensation to Consultant or to any other party. However, notwithstanding any provision to the contrary in this Agreement, Consultant shall retain ownership and all rights in all inventions, improvements, discoveries, methodologies, models, formats, software, algorithms, processes, procedures, designs, specifications, findings, and other intellectual properties developed, gathered, or produced by Consultant prior to or independently of any of its services under this Agreement ("Pre-existing Materials"), including such Pre-existing Materials that Consultant employs in the performance of this Agreement, or incorporates into any part of the Work Product. Consultant grants the City an irrevocable, non-exclusive, royalty-free license in perpetuity to use, disclose, derive from, and transfer such Pre-existing Materials, but only as an inseparable part of the Work Product. Any modifications made by the City to any of the Consultant's Work Product or any partial use or reuse of the Work Product without the express written consent of the Consultant will be at the City's sole risk and without liability to the Consultant and the City shall indemnify, defend, and hold harmless from all claims, damages, losses and expenses including, but not limited to, attorney's fees resulting therefrom.

5. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the City.

6. Interest of Consultant.

A. Consultant (including principals, associates and professional employees) covenants and represents that, presently, it does not have any financial interest and shall not acquire any financial interest under the California Political Reform Act (Government Code section 81000 et seq.), direct or indirect, that would constitute a conflict of interest in any manner or degree with Consultant's performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

7. Interest of Members and Employees of City. No member of the City and no other officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement, nor shall any such person participate in any decision relating to this Agreement which affects his/her personal interests or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested.

8. Liability of Members and Employees of City. No member of the City and no other officer, employee or agent of the City shall be personally liable to Consultant or otherwise in the event of any default or breach of the City, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

9. Indemnification of City.

A. Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, investigation expenses, and expert witness fees) ("Claims"), to the extent same are caused, or alleged to have been caused, in whole or in part, by any negligent act or omission of Consultant, its officers, agents, employees, subcontractors or consultants or any entity or individual for whom Consultant shall bear legal liability in the performance of professional Services under this Agreement. For design professionals, Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless any Indemnified Parties from and against any and all Claims which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, or as may be provided by statute in Civil Code § 2782.8.

B. Indemnification for Other Than Professional Liability. Other than in the performance of professional Services as specified in Section 9.1 and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless any Indemnified Parties from and against any Claims, where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for whom Consultant is legally liable, including but not limited to, officers, agents, employees, subcontractors or consultants of Consultant. The only exception to Consultant's responsibility to indemnify, defend, and hold harmless the Indemnified Parties from Claims, is due to the active negligence, sole negligence or willful misconduct of City or its elective or appointive boards, officers, agents and employees.

C. Scope of Obligation. Consultant's duty to indemnify, protect, defend and hold harmless as set forth herein shall include the duty to defend the City (with legal counsel reasonably acceptable to City) as set forth in California Civil Code § 2778. This indemnity and defense obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under worker's compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement. This indemnification shall be regardless of, and not in any way limited by, the insurance requirements of this Agreement. This indemnification is for the full period of time allowed by law and shall survive the termination of this Agreement.

10. Consultant Not an Agent of City. City retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this Agreement. Consultant, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

11. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

12. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a City of Calistoga business license.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code, which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of this Agreement.

C. Injury and Illness Prevention Program. Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7.

D. City Not Responsible. The City is not responsible or liable for Consultant's failure to comply with any and all of said requirements.

13. Confidential Information. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by City, or as required by law.

14. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of the contract, a General Liability insurance policy, Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) Consultant agrees to have and maintain Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Consultant shall maintain Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of three (3) years after completion of contract work. A copy of the claims reporting requirements must be submitted to the City for review.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide coverage for One Million Dollars (\$1,000,000.00) Employers' Liability (Coverage B).

(c) Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision

applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "The City of Calistoga, its employees, officers, agents and contractors are hereby added as additional insureds, but only as respects work done by, for on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to the City all certificates of insurance with original endorsements affecting coverage required by this paragraph. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

B. General Liability.

(1) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

(2) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

C. All Coverages. Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Consultant shall forthwith obtain and submit proof of substitute insurance.

D. Acceptability of Insurers. Insurance is to be placed with insurers approved by the California Department of Insurance with a Best/Es rating of no less than A:VII.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

15. Assignment Prohibited. Neither the City nor Consultant may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation hereunder shall be void and of no effect.

16. Termination of Agreement.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon written notice to the Consultant upon 5 days' written notice. Consultant may terminate this Agreement upon 30 days' written notice.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at Consultant's expense, be delivered to the City or to any party it may so designate.

D. In the event of termination with or without cause, Consultant shall be entitled to any compensation owing to it hereunder up to the time of such termination for all work and services provided in accordance with the terms and conditions of this Agreement, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that Consultant shall be entitled to compensation for work in progress at the time of termination.

17. Amendment. This Agreement constitutes the complete and exclusive statement of the Agreement to City and Consultant. It may be amended or extended from time to time by written agreement of the parties hereto.

18. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

19. Time of the Essence. Time is of the essence of this Agreement, however, the Consultant shall not be held responsible for delays caused by acts outside of Consultant's control.

20. Written Notification. Any notice, demand, request, consent, approval or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City:

City of Calistoga

City Manager  
1232 Washington Street  
Calistoga, CA 94515

If to Consultant: Fehr & Peers  
100 Pringle Avenue, Suite 600  
Walnut Creek, CA 94596

21. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

B. Consultant shall maintain all documents and records, which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

22. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.



23. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

24. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

25. News Releases/Interviews: All Consultant and subconsultant news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

26. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Napa, California.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement as of the date first above written.

CITY OF CALISTOGA

FEHR & PEERS

By: \_\_\_\_\_

  
Dylan Feik, City Manager

By: \_\_\_\_\_

  
Robert Brandy

ATTEST

  
Kathy Flamson, City Clerk

melissa Velasquez, Deputy City Clerk

**EXHIBIT "A"**  
**Scope of Work**



## YELLOW ROSE RANCH TIA - SCOPE OF WORK

The draft scope of work described below includes six tasks.

### **Task 1 – Data Collection and Field Observations**

A preliminary analysis of trip generation for the project indicates that the project, at 171 units (with 121 single-family detached units and 50 multifamily units), would generate about 120 weekday AM peak hour trips, 155 weekday PM peak hour trips, and 155 Saturday peak hour trips. This level of trip generation, combined with community concerns about the effects of the addition of project trips to the transportation system, suggests that the TIA should include study of the mid-week AM peak hour, mid-week PM peak hour, and, based on recently completed TIAs for other projects in the City of Calistoga, a weekend AM peak hour and a weekend PM peak hour.

Based on the preliminary trip estimates and our knowledge of the transportation system, the remainder of this scope of work assumes that seven intersections will be included for study. At this time, we assume that the TIA would include analysis of the following intersections:

1. Tubbs Lane/Foothill Boulevard (SR 128)
2. North Project Access/Foothill Boulevard (SR 128)
3. South Project Access/Foothill Boulevard (SR 128)
4. Mitzi Drive/Foothill Boulevard (SR 128)
5. Petrified Forest Road-Cedar Street/Foothill Boulevard (SR 128)
6. Berry Street/Foothill Boulevard (SR 128)
7. Lincoln Avenue (SR 29)-Kortum Canyon Road/Foothill Boulevard (SR 128)-Saint Helena Highway (SR 29-128)

Fehr & Peers will collect intersection turning movement counts at the five non-project access intersections for the following periods:

- Midweek morning peak period (7:00 AM – 9:00 AM)
- Midweek evening peak period (4:00 PM – 6:00 PM)
- Saturday midday period (10:00 AM – 4:00 PM)

These counts will include the collection of the number of vehicle turning movements, heavy vehicles, bicycles and pedestrians. The longer Saturday midday counts will be used to more definitively define the weekend AM and PM peak hours. We will also collect a five-day roadway hose count along Mitzi Drive to establish a local single-family detached residential unit trip rate; this data will be collected on a Wednesday through Sunday basis to provide weekday and weekend trip generation information. The observed

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residential trip rate will be used in a comparison against single family detached residential data in the ITE *Trip Generation Manual, 10<sup>th</sup> Edition*.

We will conduct field observations of traffic patterns, queue lengths, intersection operations, and lane utilization at the selected study intersections. We will perform the observations at the same time as the counts. We will use these observations to validate the Existing Conditions traffic analysis in Task 2.

## **Task 2 – Transportation Impact Analysis**

The multimodal transportation impact analysis is comprised of the following subtasks.

### *Task 2.1 – Project Trip Analysis*

Fehr & Peers will estimate weekday daily, weekday AM peak hour, weekday PM peak hour, weekend AM peak hour, and weekend PM peak hour trip generation for the proposed project. The estimates will be prepared using data from the Institute of Transportation Engineers' *Trip Generation Manual, 10<sup>th</sup> Edition* and/or the five-day Mitzi Drive hose count data.

The project's size, proposed land uses, and physical location within the local and regional transportation network may result in a project trip distribution that includes a large regional component. Accordingly, we will use data from the Napa-Solano regional travel demand model and our knowledge of the local transportation system to develop trip distribution assumptions for the project. We will then assign the project trips to the study intersections. We will also qualitatively analyze the potential for new pedestrian and bicycle trips to inform the analysis as to potential growth in pedestrian and bicycle volumes around the project site.

We will prepare an assumptions memorandum with the count data (from Task 1), trip generation estimates, trip distribution assumptions, trip assignment estimates, and suggested Saturday study periods for City staff review and direction.

### *Task 2.2 - Existing Conditions Analysis*

Based on the data collected in Task 1, Fehr & Peers will evaluate existing study intersection operations by calculating intersection peak hour levels of service (LOS) using the *2010 Highway Capacity Manual* or *Highway Capacity Manual, 6<sup>th</sup> Edition* methodologies and the Synchro software analysis package.

We will also document the transit, bicycle and pedestrian systems within the study area. The assessment will include a description of existing facilities and service levels based on count data, field observations, and information obtained from local agency staff.

### *Task 2.3 – Analysis Scenarios*

Fehr & Peers will evaluate the following scenarios:

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- Existing with Project Conditions
- Near Term Conditions
- Near Term with Project Conditions
- Cumulative (Year 2040) without Project Conditions
- Cumulative (Year 2040) with Project Conditions

We will use the methodologies and software packages referenced in Task 2.2 to evaluate operations at the study intersections. Significant impacts at study intersections will be identified using the appropriate impact criteria. Mitigation measures will be proposed, if necessary. We will also qualitatively evaluate the off-site pedestrian, bicycle and transit network to determine if the proposed project would impact these facilities.

We will develop Near Term Conditions forecasts using the count data collected in Task 1 and data regarding recently approved and built-but-not-occupied projects in Calistoga. We will develop Cumulative (Year 2040) without Project Conditions forecasts using data from the Napa County travel demand model. We will use the trip assignment data developed in Task 2.1 memorandum to develop Existing with Project, Near Term with Project, and Cumulative with Project Conditions volumes.

## **Task 3 – Site Plan Review**

We will assess site access and circulation to ensure efficient circulation of vehicles, bicycles and pedestrians within the project site and on adjacent roadways:

- Motor vehicle circulation and safety
- Site access and interface with roadway network
- Pedestrian access, circulation, and safety within and adjacent to the site
- Bicycle access and circulation within and adjacent to the site, and location/type of bicycle parking
- Service and emergency vehicle access and circulation

## **Task 4 – Documentation**

We will summarize our data, analysis and findings in a report. We will prepare the following documents:

- Administrative Draft Transportation Impact Analysis Report
- Draft Transportation Impact Analysis Report
- Final Transportation Impact Analysis Report

This scope of work assumes moderate comments from the City on the Administrative Draft TIA report and minor comments from City staff on the Draft TIA report. We have included a total of eight hours of staff



time to respond to comments on the Administrative Draft report and four hours of staff time to respond to comments on the Draft report.

#### **Task 5 – Meetings/Conference Calls**

We will attend up to four in-person meetings as part of this scope of work. At this time, we assume that two of these meetings would include one Planning Commission hearing and one City Council hearing. We will also participate in two conference calls with the project team over the course of the project.

#### **Task 6 – Informational VMT Analysis**

Consistent with Senate Bill 743 requirements and subsequent OPR guidance, Fehr & Peers will estimate project daily vehicle miles of travel (VMT) using the trip generation estimates calculated in Task 3, household travel survey data, and data from the Napa-Solano travel demand model. We will also request market information on regional trip distribution patterns from the project applicant in support of this analysis. Total daily VMT can be converted into VMT per capita estimates based on the number of project residents. This analysis will be presented for informational purposes since the City of Calistoga has yet to adopt a VMT threshold for application in CEQA documents.

Although local agencies have discretion to establish VMT-related significance criteria, Office of Planning and Research (OPR) guidance specifies that a project generating 15 percent less than regional VMT would be considered less-than-significant. Caltrans has also begun to request VMT analysis as part of their review of development projects that contribute a substantial number of trips to the State Highway System (SHS). Recently, local agencies throughout the Bay Area have begun to receive CEQA comment letters from Caltrans Intergovernmental Review (IGR) staff requesting VMT analysis and recommending trip reduction mitigation measures. Fehr & Peers will coordinate with City staff and the project team to identify appropriate methodologies for the VMT analysis to evaluate potential effects on VMT.

Performing the VMT analysis and including it as an informational, non-CEQA analysis would increase the defensibility of the study given the uncertainty of when the environmental review process would be completed relative to the proposed July 1, 2020 end date of the SB 743 "opt-in" period.

## IMPACT FEE PAYMENT AGREEMENT

This IMPACT FEE PAYMENT AGREEMENT ("Agreement") is entered into as of December 4, 2018, by and between Miroslav Reich, ("Owner") and CITY OF CALISTOGA, a municipal corporation ("City").

### RECITALS

A. Owner owns those certain real properties located at 916 Foothill Boulevard and 1102 Pine Street, Calistoga and identified as Napa County Assessor's Parcel Numbers 011-257-022 and 011-257-023, respectively ("Properties").

B. On July 11, 2018, the Calistoga Planning Commission approved Use Permit UP 2018-4 for a wine tasting room on the 916 Foothill Boulevard property. During the course of the City's review of the use permit application, it was determined that the two properties share a single connection to the public water system, necessitating the installation of an additional connection, and that the utility baselines for the Properties need to be increased to reflect their current/projected water usage and wastewater generation.

C. The total cost associated with increasing the utility baselines for the Properties amounts to water connection fees of \$1,789.74 and wastewater connection fees of \$4,795.71.

D. On October 24, 2018, the Owner applied for a plumbing permit to install a separate water meter for 1102 Pine Street and connect it to the City's water line.

E. The Owner desires to pay the connection fees over a period of six months.

F. The City desires to ensure there are proper connections for the Properties to the City's water system and to bring their utility baselines into alignment with actual and projected water use and wastewater generation.

G. City and Owner desire to set forth the terms and provisions of the payment of the Impact Fees.

NOW, THEREFORE, for good and valuable consideration, Owner and City agree as follows:

### **Section 1.** Impact Fee Payment

Owner will pay City an amount equal to \$6,585.45. Owner will pay this amount in six (6) equal monthly installment payments of approximately \$1,098, starting on December 10, 2018 and ending on May 10, 2019. All payments must be made no later than the 10th day of each month during the term of this Agreement.

### **Section 2.** Indemnification

Owner hereby indemnifies and holds the City harmless from all demands, claims, actions and damages to any person or property brought by any party arising out of this Agreement.

### **Section 3.** Default

Failure by Owner to perform its obligations hereunder will constitute a default under this Agreement. In the event of default by the Owner, City may take any and all action available to it

under the law to recover the amount owed, including, but not limited to seeking payment through collections. In the event of default by the Owner, City will be entitled to recover from Owner all costs and fees, including attorneys' fees, incurred by the City as part of its efforts to collect the amount owed by Owner.

**Section 4. Miscellaneous Provisions**

a. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, without reference to choice of laws principles. Any action to enforce the terms and provision of this agreement must be filed in the County of Napa.

b. Notices. Notices or other communications given under this Agreement shall be in writing and shall be served personally or transmitted by first-class mail, postage prepaid. Notices shall be deemed received either at the time of actual receipt or, if mailed in accordance herewith, on the third (3rd) business day after mailing, whichever occurs first. Notices shall be directed to the parties at the following addresses or at such other addresses as the parties may indicate by notice:

To City:                      City of Calistoga  
                                     1232 Washington Street  
                                     Calistoga, CA 94515  
                                     Attention: City Manager

To Owner:                    Miroslav Reich  
                                     2201 Mora Avenue  
                                     Calistoga, CA 94515  
                                     Telephone: 707.815.9080

c. Headings. The titles and headings of the various sections of this Agreement are intended solely for reference and are not intended to explain, modify or place any interpretation upon any provision of this Agreement.

d. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

e. Further Assurances. The parties shall execute, acknowledge, file or record such other instruments and statements and shall take such additional action as may be necessary to carry out the purpose and intent of this Agreement.

f. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, legal representatives, successors and assigns.

g. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersede all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by all parties hereto.




IN WITNESS WHEREOF, the City and Owner have caused this Agreement to be executed by their respective representatives thereunto duly authorized as of the dates set forth below their signatures.

CITY OF CALISTOGA

By:   
Dylan Feik, City Manager

OWNER

By:   
Miroslav Reich

ATTEST

  
Kathy Flamson, City Clerk

## **CITY OF CALISTOGA AGREEMENT NO. 799**

### **AGREEMENT FOR EMERGENCY MEDICAL, FIRE PROTECTION AND RELATED SERVICES**

**THIS AGREEMENT** is made and entered into as of this 1<sup>st</sup> day of November 2018, by and between KNIGHTS VALLEY VOLUNTEER FIRE COMPANY, a non-profit corporation organized under the laws of the State of California, hereinafter referred to as "KVVFC", and the CITY OF CALISTOGA, a municipal corporation, hereinafter referred to as "CALISTOGA".

#### **RECITALS**

**WHEREAS**, KVVFC is a volunteer fire department organized under the laws of the State of California to provide for prevention and suppression of fires and emergency medical response within those areas (hereinafter referred to as the "KV/FV Zone") of Sonoma County not located within the boundaries of municipalities or fire protection districts described and shown on the map entitled "Knights Valley and Franz Valley Contract Zone" attached hereto as Exhibit "A" and made a part hereof; and

**WHEREAS**, CALISTOGA is general law city with authority to provide for prevention and suppression of fires and emergency medical response within the city and to that end maintains a fire department to provide emergency medical, rescue, education, prevention and fire suppression and protection services within the city limits of CALISTOGA; and

**WHEREAS**, in the KV/FV Zone there are a number of inhabitants who live and work in residential, industrial, commercial, and other structures as well as a number of visitors to and through the KV/FV Zone for whom KVVFC desires to enhance the provision of emergency medical service, rescue, and fire suppression and protection services; and

**WHEREAS**, to provide such enhanced services, KVVFC desires CALISTOGA, pursuant to Government Code Section 55632, to provide emergency medical, rescue, and fire suppression and protection services within the KV/FV ZONE on the terms and conditions set forth herein;

#### **TERMS**

**NOW, THEREFORE**, KVVFC hereby engages the services of CALISTOGA, and CALISTOGA agrees to serve KVVFC in accordance with the terms and conditions set forth herein:

**1. Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2022, unless terminated earlier in accordance with Paragraphs 9 (Termination for Cause), 10 (Other Termination) or 23(a) (Covenant of No Undisclosed Conflict); except that the obligations of the parties under Paragraphs 7 (Insurance) and 8 (Indemnification) shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of each party to the other party shall also continue after said expiration date or early termination in relation to

the obligations prescribed by Paragraphs 15 (Confidentiality), 20 (Taxes) and 21 (Access to Records/Retention). The term of this Agreement shall be automatically renewed for two (2) additional three year periods, under the terms and conditions then in effect, unless either party gives the other party written notice of intention not to renew no less than ninety (90) days prior to the expiration of the then current term. Such notice of nonrenewal shall be given on behalf of KVVFC by its Board of Trustees or designee thereof. Such notice of nonrenewal may be given on behalf of CALISTOGA by the city of Calistoga City Manager or designee thereof. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

**2. Scope of Services.** CALISTOGA shall provide KVVFC with those services set forth in Exhibit "B", attached hereto and incorporated by reference herein.

**3. Compensation.** As consideration for CALISTOGA's provision of the services to KVVFC described in Exhibit "B" attached, KVVFC shall pay CALISTOGA a fee based upon the costs for services and numbers of calls for services as described in Exhibit "C" attached and incorporated here by reference.

**4. Method of Payment.** All payments for compensation by KVVFC to CALISTOGA shall be made only upon presentation by CALISTOGA to KVVFC of a quarterly invoice, payable in arrears. All such invoices shall be submitted to the Treasurer of KVVFC who, after review and approval as to form and content which shall not be unreasonably withheld, shall submit the invoice to the KVVFC accountant no later than fifteen (15) calendar days following receipt. KVVFC shall use its best efforts to pay such approved invoices within forty-five (45) days following receipt.

**5. Independent Contractor.** CALISTOGA shall perform this Agreement as an independent contractor. CALISTOGA and the officers, agents and employees of CALISTOGA are not, and shall not be deemed, KVVFC employees for any purpose, including workers' compensation and employee benefits. CALISTOGA shall, at CALISTOGA's own risk and expense, determine the method and manner by which duties imposed on CALISTOGA by this Agreement shall be performed; provided, however, that KVVFC may monitor the work performed by CALISTOGA. KVVFC shall not deduct or withhold any amounts whatsoever from the compensation paid to CALISTOGA, including, but not limited to amounts required to be withheld for state and federal taxes, unless required to do so by court order. As between the parties to this Agreement, CALISTOGA shall be solely responsible for all such payments.

**6. Specific Performance.** It is agreed that CALISTOGA, including the agents or employees of CALISTOGA, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CALISTOGA under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, KVVFC, in addition to any other rights or remedies which KVVFC may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CALISTOGA.

**7. Insurance.** CALISTOGA shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage or equivalent self-insurance acceptable to the other party:

(a) **Workers' Compensation insurance.** To the extent required by law during the term of this Agreement, CALISTOGA shall provide workers' compensation insurance for the performance of any of CALISTOGA's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide KVVFC with certification of all such coverages upon request by KVVFC's Risk Manager.

(b) **Liability insurance.** CALISTOGA shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(i) **General Liability.** Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CALISTOGA or any officer, agent, or employee of CALISTOGA under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(ii) **Professional Liability/Errors and Omissions.** Professional liability [or errors and omissions] insurance for all activities of CALISTOGA arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim.

(iii) **Comprehensive Automobile Liability Insurance.** Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CALISTOGA's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CALISTOGA owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(i) above. If CALISTOGA or CALISTOGA's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CALISTOGA shall provide evidence of personal auto liability coverage for each such person upon request.

(c) **Certificates of Coverage.** Insurance coverages referenced in 7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of KVVFC's Risk Manager, demonstrated by other evidence of coverage acceptable to KVVFC's Risk Manager, which shall be filed by CALISTOGA with the Fire Department prior to commencement of performance of any of CALISTOGA's duties.

(i) The certificate(s) or other evidence of coverage shall reference this Agreement by its KVVFC number or title and department; shall be kept current during the term of this Agreement; shall provide that KVVFC shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than

one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

**(ii) Waiver of Subrogation and Additional Insured Endorsements.** For the commercial general liability insurance coverage referenced in 7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CALISTOGA shall also file with the evidence of coverage an endorsement from the insurance provider naming KVVFC, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CALISTOGA shall file with the evidence of coverage an endorsement waiving subrogation.

**(iii)** The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CALISTOGA not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of KVVFC shall pertain only to liability for activities of CALISTOGA under this Agreement, and that the insurance provided is primary coverage to KVVFC with respect to any insurance or self-insurance programs maintained by KVVFC. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

**(iv)** Upon request by KVVFC, CALISTOGA shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

**(d) Deductibles/Retentions.** Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, KVVFC, which approval shall not be denied unless KVVFC determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CALISTOGA by this Agreement. At the option of and upon request by KVVFC if KVVFC determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects KVVFC, its officers, employees, agents and volunteers or CALISTOGA shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

**(e) Inclusion in Subcontracts.** CALISTOGA agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 7.

## **8. Hold Harmless/Defense/Indemnification.**

**(a) In General.** To the full extent permitted by law, each party shall each defend, indemnify and hold harmless the other party as well as their respective officers, agents and employees from any claims, suits, proceedings, loss or liability, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising out of or connected with any acts

or omissions of that party or its officers, agents, employees, volunteers, or other contractors or their subcontractors, when performing any activities or obligations required of that party under this Agreement. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

**(b) Employee Character and Fitness.** Each party accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) that will provide the services required of either party under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, each party shall hold the other party and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision.

**9. Termination for Cause.** If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving ten (10) days prior written notice to the defaulting party in the manner set forth in Paragraph 13 (Notices).

**10. Other Termination.** This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least ninety (90) days prior to the effective date, as long as the date the notice is given and the effective date of the termination are in the same fiscal year; provided, however, that no such termination (including any nonrenewal pursuant to Paragraph 1) may be effected by KVVFC unless an opportunity for consultation is provided prior to the effective date of the termination; and provided further, that no such termination or nonrenewal may be effected by any person or entity that may assume this contract for the benefit of the KV/FV Zone without the prior written consent of the KVVFC Board of Trustees, which consent may not unreasonably withhold.

**11. Disposition of, Title to and Payment for Work upon Expiration or Termination.**

**(a)** Upon expiration of this Agreement or termination for cause under Paragraph 9 or termination for convenience of a party under Paragraph 10:

**(i)** To the extent CALISTOGA has provided services through Software and Applications materials licensed to KVVFC, KVVFC shall promptly return the Software and Application materials to CALISTOGA. In addition, to the extent CALISTOGA maintains KVVFC data on those portions of digital software hosted by CALISTOGA and not controlled by KVVFC ("KVVFC Data"), CALISTOGA shall promptly return KVVFC Data to KVVFC in a format designated by KVVFC and shall subsequently purge KVVFC Data from CALISTOGA's systems upon confirmation from KVVFC that the copy of the data provided to KVVFC is comprehensive of the data previously hosted by CALISTOGA.

**(ii)** All finished or unfinished documents and other materials, if any, and all rights

therein shall become, at the option of KVVFC, the property of and shall be promptly returned to KVVFC, although CALISTOGA may retain a copy of such work for its personal records only, except as otherwise provided under Paragraph 15 (Confidentiality) of this Agreement. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CALISTOGA under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only KVVFC shall be entitled to claim or apply for the copyright or patent thereof. Notwithstanding the foregoing and to the extent services under this Agreement involve the development of previously patented inventions or copyrighted software, then upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CALISTOGA or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that KVVFC shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which KVVFC is a party. If the product involves a source code, CALISTOGA shall either provide a copy of the source code to KVVFC or shall place the source code in an escrow account, at CALISTOGA's expense, from which the source code may be withdrawn and used by KVVFC for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to KVVFC.

(b) CALISTOGA shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of the notice of termination and completed satisfactorily prior to the effective date of the termination; except that CALISTOGA shall not be relieved of liability to KVVFC for damages sustained by KVVFC by virtue of any breach of the Agreement by CALISTOGA whether or not the Agreement expired or otherwise terminated, and KVVFC may withhold any payments not yet made to CALISTOGA for purpose of set off until such time as the exact amount of damages due to KVVFC from CALISTOGA is determined.

**12. No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

**13. Notices.** All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

**KVVFC:** Fire Chief  
Knights Valley Volunteer Fire Co.  
16850 Spencer Lane  
Calistoga, CA 94515

**CALISTOGA:** Fire Chief  
City of Calistoga  
1232 Washington St.  
Calistoga, CA 94515

**14. [RESERVED]**

**15. Confidentiality.**

**(a) Maintenance of Confidential Information.** Confidential information is defined as all information disclosed to CALISTOGA which relates to KVVFC's past, present, and future activities, as well as activities under this Agreement. CALISTOGA shall hold all such information as CALISTOGA may receive, if any, in trust and confidence, except with the prior written approval of KVVFC, expressed through its Fire Chief. Upon cancellation or expiration of this Agreement, CALISTOGA shall return to KVVFC all written and descriptive matter which contains any such confidential information, except that CALISTOGA may retain for its files a copy of CALISTOGA's work product if such product has been made available to the public by KVVFC.

**(b) Protection of Personally Identifiable Information and Protected Health Information.**

**(i)** To the extent CALISTOGA is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CALISTOGA shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CALISTOGA shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of KVVFC Protected Information provided to, or accessed or created by, CALISTOGA.

**(ii)** CALISTOGA shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of KVVFC's Protected Information, including, but not limited to, PHI and PII. Upon request, CALISTOGA shall make available to KVVFC its policies and procedures, staff training records and other documentation of compliance with this Paragraph 15.

**(iii)** CALISTOGA agrees to notify KVVFC immediately of any unauthorized access to or disclosure of Protected Information that it becomes aware of.

**(iv)** CALISTOGA will be responsible for all costs associated with CALISTOGA's breach of the security and privacy of KVVFC's Protected Information, or its unauthorized access to or disclosure of KVVFC's Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

**16. Assignments or Subcontracts.**

**(a) In general.** A consideration of this Agreement is the personal reputation of CALISTOGA; therefore, CALISTOGA shall not assign any interest in this Agreement or subcontract any of the services CALISTOGA is to perform hereunder without the prior written



consent of KVVFC, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CALISTOGA, or to perform any of the remaining services required under this Agreement within the same time frame required of CALISTOGA or the same emergency response time CALISTOGA is able to provide shall be deemed to be reasonable grounds for KVVFC to withhold its consent to assignment. The consent of CALISTOGA to an any assignment of this Agreement to a person or entity that assumes KVVFC's obligations hereunder shall not be required, but KVVFC shall remain a third-party beneficiary of this Agreement with the rights set forth in this paragraph and paragraph 10 and 17.

**(b) Effect of Change in Status.** If CALISTOGA changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CALISTOGA. Failure of CALISTOGA to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

**17. Amendment/Modification.** Except as specifically provided herein regarding administrative amendment by the parties' respective Fire Chiefs of the Operation Plan attached hereto as Exhibit "D", this Agreement may only be modified or amended in writing and with the prior written consent of both parties. In particular, only an amendment of this Agreement, signed by both parties, may authorize extra and/or changed work if beyond the scope of services prescribed by Exhibit "B". Failure of a party to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights of that party to adjustment in the contract price or contract time and no compensation shall be paid for such extra work. Notwithstanding anything to the contrary in this Agreement or any Exhibit hereto, neither this Agreement nor any Exhibit hereto may be amended such that CALISTOGA is no longer obligated to provide first response emergency medical services, rescue and fire suppression services to the KV/FV Zone as set forth in the first paragraph of Exhibit "B" the prior written consent of the KVVFC Board of Trustees, which consent shall not be unreasonably withheld.

**18. Interpretation; Venue.**

**(a) Interpretation.** The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts. Venue.

**(b)** This Agreement is made in Napa and Sonoma Counties, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Sonoma, a unified court, in Santa Rosa. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California.

The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Santa Rosa, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

**19. Compliance with Laws.** Each party shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) **Non-Discrimination.** During the performance of this Agreement, each party and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age, mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), use of family care leave, or political affiliation or belief. Each party shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, each party shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to a party services or works required of that party by the State of California pursuant to agreement between that party and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (t), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and the party and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) **Documentation of Right to Work.** Each party agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of that party performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. Each party shall make the required documentation available upon request to the other party for inspection.

(c) **Inclusion in Subcontracts.** To the extent any of the services required of a party under this Agreement are subcontracted to a third party, the party shall include all of the provisions of this Paragraph 16 in all such subcontracts as obligations of the subcontractor.

(d) Nothing in this Paragraph shall confer a right to subcontract except as permitted under Paragraph 16.

**20. Taxes.** Each party agrees to file federal and state tax returns or applicable withholding documents and to pay all applicable taxes or make all required withholdings on amounts paid pursuant to this Agreement and shall be solely liable and responsible to make such withholdings

and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. Each party agrees to indemnify and hold either party harmless from any liability it may incur to the United States or the State of California as a consequence of either party's failure to pay or withhold, when due, all such taxes and obligations. In the event that either party is audited for compliance regarding any withholding or other applicable taxes or amounts, both parties agree to furnish either party with proof of payment of taxes or withholdings on those earnings.

**21. Access to Records/Retention.** KVVFC, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CALISTOGA which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CALISTOGA shall maintain all required records for at least seven (7) years after KVVFC makes final payment for any of the work authorized hereunder and all pending matters are closed, whichever is later.

**22. Authority to Contract.** CALISTOGA and KVVFC each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

**23. Conflict of Interest. Covenant of No Undisclosed Conflict.** The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. CALISTOGA hereby covenants that it presently has no interest not disclosed to KVVFC and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as KVVFC may consent to in writing prior to the acquisition by CALISTOGA of such conflict. CALISTOGA further warrants that it is unaware of any financial or economic interest of any public officer or employee of CALISTOGA relating to this Agreement. CALISTOGA agrees that if such financial interest does exist at the inception of this Agreement, KVVFC may terminate this Agreement immediately upon giving written notice without further obligation by KVVFC to CALISTOGA under this Agreement.

**24. Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party's job openings where such publication or distribution is directed to the public generally.

**25. Third Party Beneficiaries.** Except as set forth herein, nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

**26. Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

**27. Severability.** If any provision of this Agreement, or any portion thereof, is found by any

court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

**28. Entirety of Contract.** This Agreement, including any documents expressly incorporated by reference whether or not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

**29. Special Terms and Conditions. [RESERVED]**

**IN WITNESS WHEREOF,** this Agreement was executed by the parties hereto as of the date first above written.

**CALISTOGA:**

**City of Calistoga,** a California municipal corporation

By: \_\_\_\_\_

Dylan Feik  
City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_

Michelle Marchetta Kenyon  
City Attorney

ATTEST:

By: \_\_\_\_\_

Kathy Flanigan  
City Clerk

**KVVFC:**

**Knights Valley Volunteer Fire Company,**  
a California non-profit organization

By: \_\_\_\_\_

Name: \_\_\_\_\_

Jennifer Sloan

court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

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By: \_\_\_\_\_

  
Dylan Feik  
City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_

  
Michelle Marchetta Kenyon  
City Attorney

ATTEST:

By: \_\_\_\_\_

  
Kathy Flannison  
City Clerk

**KVVFC:**

**Knights Valley Volunteer Fire Company**,  
a California non-profit organization

By: \_\_\_\_\_

Name: \_\_\_\_\_

**EXHIBIT A**  
**ZONE MAP**



# County of Sonoma CSA40 Areas

- Community
- Freeway
- Highway
- Railroad
- Major Road
- River
- Named Riparian Feature
- Marsh
- CSA 40
- Incorporated City
- Military
- Park

Location Reference

Map Expiry Date: 8/29/2008

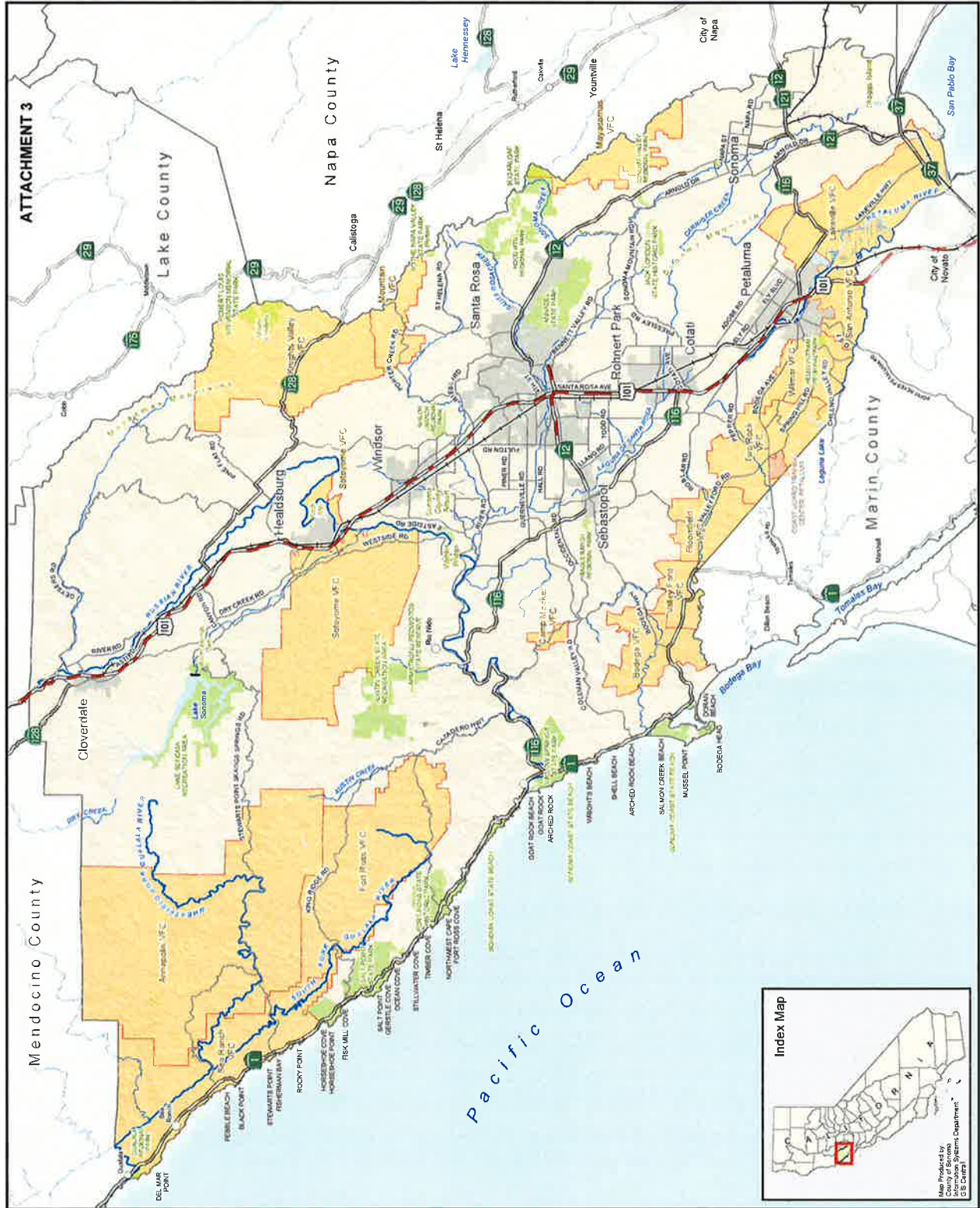
Miles: 0, 2.5, 5, 10

Kilometers: 0, 3, 6, 12

**Author:**  
County of Sonoma  
Information Systems Department  
GIS Center, SCPS

**Project:**  
California State Plane Coordinates  
System, Zone 8, NAD 83, US survey  
Some data have been re-projected from  
other coordinate systems and may not reflect  
actual ground conditions.

**Document Source and Date:**  
scs402\gisdata\projects\GISRAI  
CSA40\_InfraMap.mxd - 1/20/2007



**EXHIBIT B**  
**SCOPE OF WORK**

**I. CALISTOGA shall:**

- A. Furnish within the defined KV/FV ZONE the same level of emergency medical, rescue and fire protection services as are provided within the city limits of CALISTOGA, responding to all such calls within the defined KV/FV ZONE in the same manner and under the same circumstances as those from within the city limits of CALISTOGA, except that equipment and personnel engaged in major responses within the city limits of CALISTOGA shall not be required to respond to calls in the KV/FV ZONE while so engaged. In the event of a conflict between the need for emergency medical service, rescue, or fire protection service within the city limits of CALISTOGA and within the KV/FV ZONE the needs within the city limits of CALISTOGA shall be given first priority.
- B. Retain legal jurisdiction for all incidents that occur within city limits of CALISTOGA.
- C. Handle the KV/FV ZONE call in its entirety if only one engine is needed to mitigate the emergency.
- D. CALISTOGA shall not be responsible for the cost of dispatch to the incidents in the KV/FV Zone CALISTOGA responds to.

**II. Knights Valley Volunteer Fire Company (KVVFC) shall:**

- A. Retain legal jurisdiction for all incidents that occur within the KV/FV ZONE.
- B. Provide compensation to CALISTOGA according to Exhibit C listed herein.

**III. KVVFC and CALISTOGA shall:**

- A. Designate their respective Fire Chiefs as authorized to jointly prepare and amend from time to time as they determine necessary a KV/FV ZONE Operation Plan that shall be deemed, when signed by such Fire Chiefs, to become a part of this Agreement as an amendment to Exhibit "D". The Operation Plan shall detail policy and procedures for implementation of the requirements of this Agreement relating to response, dispatch, and mutual aid resources. In the event the Operation Plan is amended by the Fire Chiefs, such amendment shall become effective only when fully signed and dated duplicate originals of the amended Exhibit "D" have been filed with the Secretary of KVVFC's Board of Trustees.
- B. Have their respective Fire Chiefs cooperate to produce and provide to each party such reports as either Fire Chief may from time to time request.



**EXHIBIT C**  
**COMPENSATION AND EXPENSE REIMBURSEMENT**

**I. Compensation**

KVVFC shall pay CALISTOGA \$1,223 for response to each incident response provided by CALISTOGA into the KV/FV ZONE. This amount shall be increased annually by 3%.

CALISTOGA shall be compensated for a minimum of 16 incidents per fiscal year and a maximum of 25 incidents per year. Calls above the maximum of 25 per fiscal year will be included at no additional cost to KVVFC.

No more than 25% of the annual maximum payment shall be payable for any fiscal quarter. If, in any of the first three fiscal quarters, more than 8 incident responses are made, the extra incident responses will be carried forward to the next quarter.

**II. Payments and Credits**

KVVFC shall pay CALISTOGA on a quarterly basis, in arrears, upon presentation of invoices to KVVFC by CALISTOGA.

## **EXHIBIT D**

### **OPERATION PLAN**

Pursuant to Section 17 and Exhibit "B(JII)(A)" of the Agreement, this Operation Plan provides the operating procedures mutually developed and maintained by the parties' respective Fire Chiefs for proper implementation of the obligations of the parties under the Agreement. This Operation Plan may be amended upon mutual agreement by the parties' respective Fire Chiefs as deemed necessary,

#### **I. By CALISTOGA**

A. CALISTOGA shall provide Emergency Response, which shall include:

1. Providing one staffed Type I Engine with two personnel, 24 hours per day, seven days per week, from CALISTOGA's City Fire Station;
2. Providing additional apparatus and equipment as necessary, staffed by off-duty and/or part time firefighters on a 24-hour basis, available for response into the KV/FV ZONE from CALISTOGA's City Fire Station; and
3. Responding Code 3 to all emergency calls within the KV/FV ZONE with appropriate equipment, as available, to mitigate the emergencies.
4. When CALISTOGA is first unit on scene and incident can be handled by a single resource, CALISTOGA shall handle and may cancel the KVVFC unit.
5. CALISTOGA shall not be responsible for the cost of dispatch for incidents in the KV/FV Zone.

B. CALISTOGA shall respond to mutual aid requests with appropriate equipment, as available.

#### **II. By KVVFC**

- A. May (but shall not be obligated to) respond to all reported incidents within the KV/FV ZONE, with minimum of one apparatus staffed with one personnel, if available.
- B. May (but shall not be obligated to) respond to mutual aid requests with appropriate equipment and personnel, if available.

#### **III. Both CALISTOGA and KVVFC:**

CALISTOGA and KVVFC shall provide emergency response otherwise required by this Agreement in accordance with the following procedures:

- A. Initial command shall be established by the first arriving unit at an incident regardless of

legal jurisdiction. Flexibility for the transfer of command to the agency having legal jurisdiction shall be at the discretion of the agency having legal jurisdiction.

- B. Upon arrival, based upon the conditions present the Incident Commander shall have full authority to commit resources as appropriate from both parties.
- C. Identify the Incident Commander who will provide sufficient information concerning the status of the incident.
- D. Every effort shall be made to ensure minimum coverage of one apparatus staffed with two personnel at the CALISTOGA City Fire Station when an extended duration incident occurs either within the city limits of CALISTOGA or within the KV/FV ZONE.


#### IV. SIGNATURES AND EFFECTIVE DATE:

The foregoing Operation Plan developed and approved by the undersigned Fire Chiefs shall be effective as of November 1, 2018.

Date: 12.6.2018

  
\_\_\_\_\_  
Augie Grube, KVVFC Fire Chief

Date: 12.6.2018

  
\_\_\_\_\_  
Steve Campbell, Fire Chief,  
City of Calistoga